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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. ...75-6361

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

APPENDIX TO PETITION FOR CERTIORARI

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OPINION
Of the United States Court of Appeals for the Fifth Circuit;
August 8, 1975, 517 F.2d 299

No. 73-2214.

United States Court of Appeals, Fifth Circuit.

Aug. 8, 1975.

UNITED STATES of America, Plaintiff-Appellant-Cross Appellee,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Defendant-Appellant-Appellee.
UNITED STATES of America, Plaintiff-Appellant-Cross-Appellee,

v.

T.I.M.E. FREIGHT, INC., et al.,
Defendants-Appellees-Cross Appellants,

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,
Defendant-Appellant-Appellee.

* * * * * * *

Appeals from the United States District Court for the Northern District of Texas.

Before BROWN, Chief Judge, and AINSWORTH and MORGAN, Circuit Judges.

JOHN R. BROWN, Chief Judge:

This governmental pattern and practice suit is one more in an ever-increasing number of Title VII employment discrimi-

nation cases arising out of the trucking industry and primarily involving the past exclusion of minority group members from the job of over-the-road-line driver (LD).[1] The Government, T.I.M.E.-D.C., Inc. and the International Brotherhood of Teamsters (IBT) all appeal from an order and decree that found that T.I.M.E.-D.C. has engaged in a system-wide pattern and practice of discrimination in violation of §§ 703(a)(1), (2)[2] and 707(a)[3] of Title VII of the Civil Rights Act of 1964. This

[1] Three very recent cases are Rodriguez v. East Texas Motor Freight, 5 Cir., 1974, 505 F.2d 40; Herrera v. Yellow Freight System, Inc., 5 Cir., 1974, 505 F.2d 66; and Resendis v. Lee Way Motor Freight, Inc., 5 Cir., 1974, 505 F.2d 69, which were preceded by Franks v. Bowman Transportation Company, 5 Cir., 1974, 495 F.2d 398; Bing v. Roadway Express, Inc., 5 Cir., 1971, 444 F.2d 687 (Bing I); Belt v. Johnson Motor Lines, Inc., 5 Cir., 1972, 458 F.2d 443; Witherspoon v. Mercury Freight Lines, 5 Cir., 1972, 457 F.2d 496; United States v. Roadway Express, Inc., 6 Cir., 1972, 457 F.2d 854; Jones v. Lee Way Motor Freight, 10 Cir., 1970, 431 F.2d 245, cert. denied, 1970, 401 U.S. 954, 91 S.Ct. 972, 28 L.Ed. 2d 237; United States v. Central Motor Lines, W.D.N.C., 1971, 338 F.Supp. 532, 352 F.Supp. 1253; United States v. Pilot Freight Carriers, Inc., M.D.N.C., 1973, 54 F.R.D. 519; United States v. Navajo Freight Lines, Inc., C.D.Cal., 1973, 6 FEP Cases 274 and 1972, 4 FEP Cases 1044; Sagers v. Yellow Freight System, Inc., N.D.Ga., 1973, 5 EPD ¶ 8885, 5753; Sabala v. Western Gillette, Inc., S.D. Tex. 1973, 362 F.Supp. 1142.

[2] 42 U.S.C.A. § 2000e-2(a)

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

[3] 42 U.S.C.A. § 2000e-6

Civil actions by the Attorney General—Complaint

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

appeal is largely focused on the issues of whether the Government carried its burden of proving pattern and practice, and if so, whether the District Court's award of carry-over seniority relief to the affected class of Black and Spanish-surnamed American (SSA) incumbent employees was appropriate, adequate or both.

This litigation represents the culmination of the consolidation of two separate suits filed by the United States against T.I.M.E.-D.C. and the Teamsters.[4] The first was filed on May 15, 1968 in the Middle District of Tennessee, alleging that T.I.M.E. Freight, Inc. (a predecessor of T.I.M.E.-D.C., Inc., see table, note 6, *infra*), the IBT, and Teamster Local 480 (representing T.I.M.E. Freight employees at the Nashville terminal) were engaged in a pattern and practice of discrimination in violation of Title VII at T.I.M.E.'s Nashville terminal.

The second suit was filed January 14, 1971 in the Northern District of Texas, charging T.I.M.E.-D.C. and IBT with engaging in a pattern and practice of discrimination on a systemwide basis. The International Association of Machinists and Aerospace Workers was subsequently joined as a defendant. After transfer the suits were consolidated in the Northern District of Texas on April 30, 1971.

[4] Reference is made interchangeably to IBT and Teamsters unless otherwise indicated by the context.

The Government's Claim

Essentially the Government charged T.I.M.E.-D.C. with engaging in a pattern and practice of discrimination by

(a) Refusing to recruit, hire, transfer and promote black and Spanish-surnamed persons on an equal basis with whites.

(b) Assigning blacks and Spanish-surnamed persons to lower paying, less desirable job classifications while reserving the higher paying, more desirable classifications for whites.

(c) Refusing to employ black and Spanish-surnamed persons as casuals (non-regular) employees on the same basis as whites.

(d) Refusing to promote or transfer black and Spanish-surnamed employees, or to provide an opportunity for such employees to transfer, to road driver, mechanic and managerial jobs on the same basis it has promoted, transferred and provided the opportunity to transfer for white employees to these jobs.

(e) Maintaining a system of promotions and transfers which perpetuates the effects of the company's past discrimination against black and Spanish-surnamed persons.

Pretrial Order ¶ 2.

The Government also alleged that IBT by itself and through its Area Conferences[5] and locals engaged in a pattern and practice of discrimination by entering into contracts which perpetuate the effects of past discrimination by impeding the transfer

[5] The Southern Area Conference covers those terminals within the states of Alabama, Florida, Georgia, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma and Texas. Seven terminals for which the United States seeks class relief are within the Southern Area Conference. *See* Rodriguez, *supra*, at 47.

of Blacks and SSAs to more desirable jobs and by failing to take affirmative action to correct continuing effects of past discrimination.

Although the Government alleged and offered proof on a wide variety of discriminatory practices, its main complaint centered on the charge that T.I.M.E.-D.C. and its predecessors had refused to initially hire Blacks and SSAs as LDs and continued to perpetuate that discrimination by refusing to permit or discouraging them to transfer to LD vacancies.

T.I.M.E.-D.C.'s Operations

T.I.M.E.-D.C. Inc. is a major interstate common carrier operating on a transcontinental basis, with headquarters in Lubbock, Texas. T.I.M.E.-D.C. operates 51 terminals in 26 states and three Canadian provinces and employs 6,472 people. T.I.M.E.-D.C. nationwide motor freight system is a product of 10 mergers over a 17 year period.[6]

[6] Merger History

10/52	Southwestern Freight Lines, Inc.	merged	into	Intercity Motor Express forming T.I.M.E., Inc.		
9/54	Harrington Truck Lines	"	"	T.I.M.E., Inc.		
5/57	Southeastern Truck Lines	"	"	"	"	
10/59	Powell Brothers Truck Lines	"	"	"	"	
6/64	Super Service Motor Freight	"	"	T.I.M.E. Freight, Inc.*		
4/67	Constructors Transport Co.	"	"	"	"	"
4/68	A portion of the operations of Texas-Arizona Motor Freight	was acquired by		"	"	"
1/69	Los Angeles-Seattle Motor Express (LASME)** and Denver-Chicago Trucking Co. (DC)***	merged into T.I.M.E. Freight, Inc. forming T.I.M.E. D.C., Inc.				

* T.I.M.E., Inc. was changed to T.I.M.E. Freight, Inc. in

** LASME was formed in 1932 in Seattle as Hendricks Refrigerated Express and served points between Vancouver and Los Angeles as of the date of the merger.

*** D.C. was formed in Denver in 1930 as Cohen Brothers Trucking and developed into a transcontinental carrier through a series of 12 mergers.

IBT is an unincorporated labor organization. T.I.M.E.-D.C. has signed a total of 124 separate collective bargaining agreements with 83 individual Teamster locals at its various terminals. Each contract consists of three basic parts, the National Master Freight Agreement, an Area Supplement and Local Riders or Addenda. The National Master and the Area Supplements are negotiated nationally on a multi-union, multi-employer basis. *See* Rodriguez, *supra*, at 47 and 60.

Job Classifications and Seniority System

Non-managerial employees of T.I.M.E.-D.C. represented by IBT are divided into four basic bargaining units—road (LD), city, garage, and clerical[7]—each with its own separate contract.

The four basic bargaining units each operate under a separate local rider and area supplement although all are covered by the National Master Freight Agreement. Accordingly each maintains its separate seniority roster.

There are generally no lines of progression within the garage. When a vacancy occurs notice is posted and any member of the unit capable of meeting the minimum qualifications for the job may bid on the basis of seniority. The same is essentially true of the city. There is no line of progression and any member of the unit may bid on the basis of seniority on any job within the unit when a vacancy arises, if the employee meets the minimum qualifications.

LD is the only job classification within the line unit. All drivers within the unit are placed on the seniority board. Unit

[7] The drivers in the city operations unit pick up freight at the terminal and deliver it locally. They must necessarily drive in congested city traffic and engage in a great deal of loading and unloading. Those in the road unit (LDs) drive tractor-trailers over the road between the company's terminals in various cities. They do not load or unload their trailers.

seniority controls the bidding on particular line runs, overtime and protection against layoffs, as well as transfer preference within the Southern Conference under the Modified Seniority Plan. (See text accompanying note 9, *infra*). A new LD with low seniority is required to "sweat" the extra board awaiting extra line runs as they arise. As he accumulates seniority he may bid on and obtain the less desirable regular line runs, looking eventually to the day he will have accumulated enough seniority to qualify for the most desirable regular runs.

Nothing in the union contracts prohibits an employee from transferring between separate bargaining units at a given terminal, but he loses his pre-transfer accumulated seniority for bid and layoff.[8]

While city drivers have occasionally and at some terminals frequently transferred to LD, it was a more normal practice for the terminal to hire many of its LDs "off the street."

Ordinarily an employee would not be allowed to transfer from one terminal to another and take his seniority with him. However those terminals within the Southern Conference have adopted a "Modified Seniority System" under which a LD domiciled within the Southern Conference who has been laid off at his home terminal is permitted to use his unit seniority to either fill a vacancy at another terminal within the South-

[8] The parties stipulated:

> 15. If a regularly employed employee not on layoff moves to a job covered by one collective bargaining agreement from a job covered by another collective bargaining agreement at one of T.I.M.E. D.C.'s terminals, it is the uniform policy and practice, in every known instance, that such employee establishes his seniority for purposes of bidding and layoff in the job he transfers to as of the date of the transfer and gives up such seniority for purposes of bidding and layoff in his old job as of that date; however, he maintains his company seniority for purposes of fringe benefits, such as vacation rights.

Pretrial Order ¶ 15.

ern Conference or bump a junior LD at such other terminal. Such transfer right must be utilized within 30 days of the layoff. The transferring LD then has the option to return to his old terminal prior to new hirees when a vacancy arises.[9]

Proceedings Below

The consolidated litigation was tried in the Northern District of Texas in early May 1972. All parties introduced live testimony including that of many alleged discriminatees, supervisory and management personnel of T.I.M.E.-D.C., teamster officers, and various experts, including a government statistician and a social psychologist who testified for T.I.M.E.-D.C. In addition the Government introduced over 80 depositions and 19 summaries of depositions taken at 10 of T.I.M.E.'s terminals.

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[9] In regard to the precise operation of Southern Conference Modified Seniority, the parties stipulated:

> 18. The provisions of modified system seniority as provided in the Southern Conference Area Over-The-Road Supplemental Agreement are as follows:
>
> a. The Employer will prepare a seniority roster for all Road Drivers who have seniority under the Road Agreement showing the drivers' full company seniority.
>
> b. Drivers will use company seniority for all purposes at home terminal, but may only move to a foreign terminal when laid off due to reduction in force at home terminal, or at the closing of a domicile point, or in the event of a new point of domicile or as approved by Change of Operation Committee.
>
> c. When a driver has been laid off, he will have a thirty (30) day period in which to exercise his seniority at some other terminal at his option.
>
> d. A driver wishing to exercise his seniority due to lay-off, will give advance notice to the terminal manager of the other station; which notice shall be posted on the bulletin board for a forty-eight (48) hour period before a bump is effective.
>
> e. Drivers who have been laid off from their original point of domicile and who have exercised their seniority at some other terminal shall be offered an opportunity to return to that point before new employees are hired.
>
> f. Drivers on lay-off who have not exercised their seniority at some other terminal shall be recalled for work in accordance with the Road Agreement. However, if recall is to a foreign terminal he will have the option of turning down the recall and thereafter, he will be entitled to recall at his home terminal only.
>
> g. Any employees of a company who under the terms of the 1970-73 Contract have voted to have Southern Conference Modified Seniority who did not already have Southern Conference Modified Seniority, and who are on lay-off and who have not had an opportunity to exercise their seniority into the other area will have a thirty (30) day period from the date of the adoption of these rules in which to exercise their seniority over any junior employee in the other area. The thirty (30) day period shall commence September 21, 1970.
>
> h. An employer shall not lay off an employee if the employee averages $150.00 per week for thirty (30) days except as provided in Artiicle 5, Section 4 of the National Master etc. contract, or for a provable economic lay-off.
>
> Pretrial Order ¶ 18.

(1.) Decree in Partial Resolution of the Suit

Following the trial but before decision, the Government and T.I.M.E.-D.C. entered into a Decree in Partial Resolution of the suit. It stated that it was neither an adjudication on the merits nor an admission by T.I.M.E. of a Title VII violation. It dealt largely with the matter of applicants for new hires. Under the decree T.I.M.E.-D.C. agreed (i) to engage in a minority recruitment program in all communities where it operates terminals in cooperation with community organizations, (ii) to provide all minority applicants who inquire about employment with an application blank and notification of any vacancies, (iii) to keep specific employment records and file periodic reports with the District Court, and

(iv) to abide by certain job qualification standards with respect to future hiring and promotion.[10]

Of greater significance to the issues on appeal, the decree mandated priority to discriminatees and subsequently a one-to-one minority-white hiring ratio.[11]

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[10] With respect to driving positions to decree provided

Qualifications for Employment

5. The qualifications for city driving and road driving positions shall be those set forth in the Department of Transportation's Motor Carrier Safety Regulations. Title 49, Part 391, Sections 391.11 and 391.15. No black or Spanish-surnamed American applicant for a road driving position who meets these qualifications shall be deemed insufficiently experienced for that position if he has the equivalent of two years experience driving equipment comparable to that to be operated on the job. In determining equivalence, T.I.M.E. D.C. shall consider such factors as military driving experience and graduation from a truck driving school.

* * * * * * *

12. T.I.M.E. D.C. may continue to give the Department of Transportation written safety test to all applicants; however, passing the test shall not be a qualification for employment unless the Department of Transportation revises its Motor Carrier Safety Regulations, Title 49, Part 391, to so provide.

[11] It prescribed the following procedure for filling future vacancies at the T.I.M.E.-D.C. terminals involved:

13. All job vacancies at T.I.M.E. D.C. terminals and other facilities at which it employs personnel shall be filled in the following sequence:

(a) By those persons who may be found by the Court, if any, to be individual or class discriminatees suffering the present effects of past discrimination because of race or national origin prohibited by Title VII of the Civil Rights Act of 1964.

Paragraph 13(a) was expressly adopted in the Court's Final Order, so it became an adjudicative, not just a consent, decree. It further provided that after all individuals covered by ¶ 13(a) have been offered an opportunity to qualify for a LD vacancy at one of the terminals, T.I.M.E. D.C. must then fill future vacancies on a one-to-one minority to white hiring ratio until the terminal reaches the ratio of minority to white employees approximate to that of the city or metropolitan area in which the terminal is located.

Finally T.I.M.E.-D.C. agreed to pay $89,500.00 in full settlement of its "alleged obligation" to individual and class discriminatees as found by the District Court. The decree provided for a maximum award of $1,500.00 to any individual discriminatee, and any award of monetary compensation would be conditioned on a signed release of any right to future compensation arising out of past discrimination covered by the litigation.

(2.) The Court's Adjudicative Order and Decree

The Court was then left with the task of determining whether there was a pattern and practice, and if so, which employees were "individual or class discriminatees suffering the present effects of past discrimination" within the meaning of ¶ 13(a) of the Consent Decree (see note 11, *supra*) and thereby entitled to transfer preference and seniority relief.

Pattern and Practice of Discrimination. The Court reviewed the Government's proof including its statistical evidence which consisted of tables showing the ratio of Blacks to Whites in each Standard Metropolitan Statistical Area (SMSA) and in each T.I.M.E.-D.C. terminal city compared with the ratio of black to white employees at that terminal,[12] and at selected major metropolitan terminals the numerical breakdown by race of each job classification.[13]

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[12] SMSA is a census bureal term of art. The Government statictics were based on the 1970 United States Census of Population Reports. Background information concerning the compilation of the Government exhibit and the underlying data was provided by a Justice Department statistician who testified at trial. T.I.M.E.-D.C. attacks the reliability and probative values of these comparative statistics.

[13] The Government tabulated comparative employment statistics for the 11 terminals at which it took depositions. The statistics were culled from a computer printout of T.I.M.E.-D.C.'s employment records which was introduced into evidence at trial. Therefore the complete comparative racial breakdown at all T.I.M.E.-D.C. terminals was a matter of record and easily computable.

The Court concluded on the statistics and live testimony of many witnesses that T.I.M.E.-D.C. has not hired minorities in proportion to their numbers in the various terminals and has not allowed minorities to engage in the choice jobs at the terminals such as LD. In addition, the Court stated that the union contracts while neutral on their face "operate to impede the free transfer of minority groups."

Having found a pattern and practice of discrimination the Court then turned to the question of remedy. Following trial the Government, responding to the Court's request, submitted a list of "Individuals for whom the Plaintiff Seeks Relief" categorizing as an "affected class" of discriminatees those incumbent employees[14] at T.I.M.E.-D.C. terminals that maintained a LD domicile prior to 1969—the approximate date at which T.I.M.E.-D.C. actively began hiring minority group members as LDs.[15]

Intra-Discriminatee Priorities and Seniority Dates. On the basis of the evidence submitted by the Government and to some degree countered by the defendants the Court divided the affected class into three groups (referred to as App. A, B, C).

App. A comprised 30 individuals[16] all of whom the District Court concluded "have suffered severe injury because of

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[14] One major exception to the basic definition of the affected class was a group of white employees at the Memphis terminal who were hired into city operations prior to August 8, 1958—the date on which the terminal ceased allowing city drivers to transfer to LD in order to keep Black city drivers from so transferring.

[15] Only 20 of T.I.M.E.-D.C.'s 51 terminals were thus included within the Government's request for individual relief.

[16] Of the thirty, twenty had either applied initially for the position of LD or had attempted to transfer from city operations to LD and had been turned down. Six were maintenance servicemen at the Nashville terminal discriminatorily denied training needed to advance within the garage. The remaining three had been the subjects of various other forms of discriminatory treatment.

the practice and plan of discrimination by T.I.M.E. These individuals produced the most convincing evidence of discrimination and harm resulting therefrom."

The Court placed four individuals in App. B because "The evidence regarding these individuals is not sufficient to show clear and convincing specific instances of discrimination or harm resulting therefrom. The evidence does show, however, that these individuals were very possibly the objects of discrimination and that they were likely harmed by such discrimination."

Finally, the Court placed the three hundred plus remaining individuals in App. C since they "either presented no evidence of discrimination against themselves and resulting harm or are no longer in the employ of TIME. As mentioned above, all are members of a class of discriminatees; however, this Court has no evidence to show that these individuals were either harmed or not harmed individually by the discrimination to the class as a whole."

A number of other provisions were significant:

In order to effectuate ¶ 13(a) (see note 11, *supra*) the Court provided that T.I.M.E.-D.C. within a specified period would send notice by certified mail to all in App. A, B and C, informing them of their right to preference on future vacancies at their terminal and of the necessity of affirmatively responding within 60 days if interested.[17] The Court then prescribed specific successively reduced bidding priorities for App. A, B and C and seniority dates on future vacancies[18] as well as a number of other provisions.

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[17] Further, failure to respond to T.I.M.E.-D.C.'s notice or failure to accept an opportunity to transfer would be a waiver of the company's obligation to the discriminatee.

[18] For *App. A*: those affirmatively responding to the notice would be notified when future vacancies arose at their home terminal in the

The Court carefully restricted the relief to future vacancies and then determined that a position would not be considered vacant if there was a seniority roster employee on layoff unless the layoff had been in existence for a period of greater than three years. Otherwise, the laid off employee would be given a preference to bid on openings prior to and without competition from the members of the affected class. (See, e. g., note 44, *infra*).

Under the order, transferring members of the affected class had to meet all objective requirements of the new job. And as to driving jobs, the Court specified that members of the affected class would be allowed to demonstrate their driving skill after they familiarize themselves with company equipment. Any such person who failed the T.I.M.E.-D.C. driving test would be permitted to retake it before a neutral examiner.

Transferring discriminatees would be allowed a 30 day probationary period during which they could return to their old job with no seniority loss in the event they were not satisfied with the new job or were unable to qualify.

---

order of terminal seniority which, if the applicant qualified, could be carried bacw to July 2, 1965 (the effective date of Title VII), over into the new position regardless of whether it was in a separate bargaining unit governed by a separate contract.

(ii) For *App. B*: after App. A members responding affirmatively to the T.I.M.E.-D.C.'s initial notice have all been offered an opportunity to bid on the position from which they had been excluded at their home terminal, T.I.M.E-D.C. would then offer an opportunity to bid on vacancies to those in App. B employed at that particular terminal with seniority carryback to January 14, 1971 (the filing of the systemwide pattern and practice suit in the Northern District of Texas).

(iii) For *App. C*: on exhaustion of App. B, a terminal would then offer the opportunity to bid on future vacancies to those of App. C at that terminal. Successful transferees of App. C would carry no accumulated seniority into the new unit but would merely have the opportunity to bid on the vacancy before persons not members of the class and the general public.

The Court also found it necessary to alter the Modified Seniority System of the Southern Area Conference (see n. 9, *supra* and pp. 42-43, *infra*). While laid off LDs at Southern Conference terminals would still be allowed to bump junior drivers at other terminals where no vacancy existed at the other terminal, if a vacancy did exist members of the affected class would be permitted to compete with the transferring LD on the basis of employment seniority. Furthermore within the Southern Conference, members of the affected class granted bidding priority on the position of LD would be permitted to bid on LD vacancies at other terminals on the basis of their seniority. However, members of the affected class domiciled at that terminal would still receive first preference to bid on the L.D. position.

The Court also specifically tailored relief to cover miscellaneous and unique circumstances at individual terminals.[19] T.I.M.E.-D.C. was required to keep extensive records and make periodic reports to the Court. And both T.I.M.E.-D.C. and IBT were enjoined from "engaging in any act or practice * * * which has the purpose or effect of discrimination * * *".

The Court retained jurisdiction and ordered a stay of the App. C relief pending appeal. None are happy and all appeal—T.I.M.E.-D.C. and IBT on the ground that the record does not

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[19] For instance it ordered that the Memphis terminal had complied with the mandate of App. C in vew of the fact that as of 1969 it had permitted members of city operations to transfer to LD, taking with them company seniority for fringe benefit purposes.

It also ordered the Nashville terminal to provide adequate training for the black garage servicemen who had previously been discriminatorily denied such training.

In view of the merged seniority rosters at T.I.M.E.-D.C.'s two Los Angeles terminals (Vernon and Montibello) discriminatees at either would be allowed to bid on vacancies at the other reserving a preference for discriminatees at their own terminal however.

support the finding of pattern and practice and that the relief, especially to App. C is inappropriate. IBT and T.I.M.E-D.C. assert that the locals were indispensable parties.

The Government, on the other hand, supporting the finding of pattern and practice, attacks the remedy in several respects. The principal attack is centered on the Court's limiting effective bidding rights to the 30 individuals in App. A to the detriment of the few in App. B, and to the flagrant discrimination of the 300 plus discriminatees in App. C. Intertwined with this is the attack on the seniority carry-back for those in App. A to July 2, 1965, the effective date of the Act, to January 14, 1971 for App. B, the date of filing of the District Court suit and to the date, if ever, each transfer into the specified better job for the hundreds in App. C. Complaint is also made of the provision requiring a layoff to continue for three years before a "vacancy" exists for which those in App. A, B and C have successively reduced transfer rights. Finally, the Government objects to the use of an employer-union qualification committee at Nashville and the failure to grant effective transfer rights to Memphis city drivers[20] hired prior to August 8, 1958.

Indispensable Parties

[1] We must determine whether Teamster locals representing T.I.M.E.-D.C. employees were indispensable parties to this litigation. We conclude that the District Court correctly ruled that they were not.

Under F.R.Civ.P. 19(a) the Court must determine whether a party should be joined "if feasible." Since the remedy in issue in this litigation will have some effect on the bargaining agreements to which the local unions are parties, it would no doubt be proper to join them as parties to the litigation. Since, however, they are scattered across the country, the trial court could conclude that it is not feasible to join them.

[20] These are included in App. C.

Under 19(b) where joinder is not feasible the Court must determine whether "in equity and good conscience" the action should proceed in the absence of the parties in issue or whether it should be dismissed. The District Court was warranted in holding that the litigation could properly proceed in the absence of the various Teamster locals.

Of great significance to the determination to proceed in the absence of the Teamster locals is the major role played by the International both in the process of contract negotiation and in all phases of this litigation. Teamster contracts are negotiated every three years on a nationwide, multi-union, multi-employer basis with each individual local giving the National Over-The-Road and City Cartage Policy and Negotiating Committee a power of attorney to negotiate on its behalf.[21]

While the National Master Freight and applicable Area Supplement will be included in the contract which the local eventually signs with the employer, both the national and area contracts are subject to acceptance by a nationwide majority vote of Teamsters, thus the members of an individual local will be bound by its provisions even if the majority of the members of the particular local votes to reject it. The process of negotiation shows that the individual locals play little if any role in the actual negotiation of the contracts which control Teamsters' seniority rights and further, that officers of the International are in a position to play a major role in that negotiation.

On the basis of these circumstances other courts which have been faced with the same issue in Title VII litigation in the trucking industry have also concluded that where the Interna-

[21] See Rodriguez, *supra*, at 60, for a more detailed description of the contract negotiating process.

tional is a party to the litigation, the individual locals will not be regarded as indispensable.[22]

Finally, the basic seniority issue in this case—whether a discriminatee should be allowed to transfer from city operations to LD (and thus from one contract to another) with full carryover terminal seniority—is neither specifically prohibited nor even addressed by the contracts before the Court, and certainly not that of local supplements. See *Pilot Freight, supra,* 54 F.R.D. at 521-22.

In view of all the circumstances we conclude that both below and here the International more than adequately represents and defends the seniority status of its members and that adequate and effective relief may be granted without unduly prejudicing the absent local unions, since they too are under the law and cannot shield continued discrimination by contract terms.

Pattern and Practice[23]

Graphic statistics led the District Court to conclude that minorities have simply been denied access to the more desirable job of LD. As of March 31, 1971, T.I.M.E.-D.C. had approximately 6,472 employees. Of those, 314 (5%) were Black and 257 (4%) were Spanish-surnamed American. A large majority of the Black and SSA employees were assigned to city operation (city driver, dockman, hostler) or serviceman (including tireman) jobs. Of the Black employees, 260 or 83% were in such jobs. Of the SSA employees, 199 or 78% were in such jobs.

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[22] *Pilot Freight, supra,* 54 F.R.D. at 522; *Navajo Freight, supra,* 4 FEP cases at 1045; *see also* United States v. Roadway Express, *supra,* at 857. *Cf.* Sabala v. Western Gillette, *supra,* 1153-55.

[23] Although T.I.M.E.-D.C. operates 51 terminals, principal relief for minority members was sought for those employed at the following 20 terminals where line drivers were domiciled prior to 1969—the

In contrast to this, of the 1,828 LDs as of March 31, 1971, only 8 (or 0.4%) were Black and only 5 (or 0.3%) were SSAs. None of the eight Blacks were employed as a line driver until 1969, even though the Government's Title VII suit with respect to the Nashville terminal had been filed on May 15, 1968. Of the

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approximate date when T.I.M.E.-D.C. began hiring and promoting minority members to LD:

T.I.M.E.-D.C. Terminals at Which the United States Seeks Class Relief

Terminals Where Depositions Taken

Terminal	Prior System & Date of Merger Into T.I.M.E.	Teamsters Area Conference
Vernon(L.A.)	SW 52 OCA 54 C 67 DC 69	W
Oklahoma City	OCA 54	S
Memphis	SE 57	S
Atlanta	SE 57	S
Chicago	SS 64 DC 69	C
Nashville	SE 57 SS 64	S
Irving	TA 68	S
San Antonio	TA 68	S
Montebello(L.A.)	Lasme 69	W
Hayward(S.F.)	C 67 Lasme 69	W
Denver	DC 69	W

Key
Ic—Intercity Motor Express
T—T.I.M.E., Inc.
SW—Southwestern Truck Lines
OCA—Oklahoma City Authority
H—Harrington Truck Lines
SE—Southeastern Truck Lines
S—Southern Area Conference
W—Western Area Conference
C—Central Area Conference

eight Black LDs, three were transferred city drivers at Memphis, two in 1969 and one in 1970; of the other five, one was hired in Evansville, Indiana in 1969 and the others were hired in Cincinnati, St. Louis and Oklahoma City in 1970. Of the five SSA LDs, three were employed at El Paso, 1950, 1966 and 1969 respectively, and two were employed at Los Angeles in 1963. So glaring was the situation that with the exception of one Black who worked as a LD at the Chicago terminal from 1950 to 1959, there is no evidence that a single Black was

Terminal	Others Prior System & Date of Merger Into T.I.M.E.	Teamsters Area Conference
Lubbock	Ic 48 OCA 54	S
Phoenix	SW 52 DC 69	W
St. Louis	SE 57 PB 59 SS 64 DC 69	C
Paris	SE 57	S
Chattanooga	SE 57	S
Cincinnati	"	C
Kansas City	PB 59 DC 69	C
Knoxville	SS 64	S
Seattle	Lasme 69 DC 69	W
Portland	Lasme 69 DC 69	W

Key PB—Powell Brothers Truck Lines
SS—Sup. Service Motor Freight, Inc.
C—Constructors Transport Co.
Lasme—Los-Angeles-Seattle Motor Express
DC—DC International

ever employed on a regular basis as LD by T.I.M.E.-D.C. or any of its predecessor companies prior to 1969.[24]

Similar facts were starkly revealed as to minority discrimination at the Nashville[25] and Memphis terminals. There is no evi-

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[24] Systemwide Job Classification* Statistics for the T.I.M.E.-D.C. system as of March 31, 1971:

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Apprentice Mechanic	4	3		1		
City Drivers						
City Heavy Duty Dr.	419	362	22	32	1	2
City PUD Dr.	874	755	57	56	5	1
Dockmen						
Dockmen	1135	932	107	85	7	4
Swamper	1	1				
Hostler	117	102	9	5	1	
Janitor						
Janitor—Shop	2		2			
Janitor—Terminal	26	11	12	3		
Line Driver	1828	1802	8	5	12	1
Mechanic	325	297	11	12	5	
Mechanic Helper	11	9			2	
Shopmen						
Partsmen	29	26	2	1		
Servicemen	156	80	57	19		
Tiremen	23	12	8	2	1	

3/31/71 Pre-Trial stipulation 14.

* The table shows statistics for only those job classifications relevant to the issues on appeal. Omitted are office and supervisory positions.

[25] See as of March 31, 1971, the employee complement by race:

	Total	White	Black
Line Driver	74	74	0
City Operation			
City Driver	31	31	0
Dockman	70	70	0
Hostler	6	6	0
Shop			
Mechanic	30	28	2
Partsman	3	3	0
Serviceman (including Tireman)	29	10	19

The first Black ever hired as a regular mechanic at the terminal was employed on April 15, 1968, approximately a month before the Government's suit was filed. The first Black ever hired as a regular dockman at the terminal was employed on September 1, 1969.

dence that Blacks were employed on a regular basis in any job other than serviceman until April 15, 1968 at Nashville. Mechanics, partsmen and servicemen are now on a common seniority roster, but until May 27, 1971 they were on three separate seniority rosters. The Southern Conference Area Supplemental Agreement effective April 1, 1970 now permits servicemen to bid on and move to mechanic jobs (and partsman jobs) and retain their seniority. However, the Agreement adds a new requirement. Servicemen may bid on and move to mechanic and partsman jobs only if they have "previously qualified" for those jobs under rules established by an employer-union qualification committee.

At Memphis[26] the first transfer of a Black from city operation to LD was in July 1969. It was here where the Government asserted and the District Court impliedly found the anti-Black policy produced an anomalous injury to White city drivers when in 1958 the company abandoned its practice of allowing White city drivers to make extra LD trips.

On the other hand, and to its great credit, T.I.M.E.-D.C. in December 1968, adopted a policy at the Memphis terminal of offering vacancies in LD jobs to qualified city employees before filling these jobs with persons "off the street." And although seniority for fringe benefits can be carried over from city to LD, such transferring city employees may not use their accrued seniority for bidding and layoff purposes as LDs.

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[26] See as of March 31, 1971, the employee complement by race:

	Total	White	Black
Line Driver	104	101	3
City Operation			
City Driver	35	24	11
Dockman (Checker)	112	89	23
Hostler	8	6	2

Line Drivers and city operation employees are on separate seniority rosters.

[2] Statistics, however, of this kind and intensity are not only significant, they may often be dispositive especially in a pattern and practice claim. As we pointed out in Rowe v. General Motors Corp., 5 Cir., 1972, 457 F.2d 348, 358:

> figures of this kind, while not necessarily satisfying the whole case, have critical, if not decisive, significance—certainly, at least in putting on the employer the operational burden of demonstrating why, on acceptable reasons, the apparent disparity is not the real one.

This synthesizes the many holdings of this and other Courts,[27] the latest of which are the trilogy of Rodriguez v. East Texas Motor Freight, 5 Cir., 1974, 505 F.2d 40; Herrera v. Yellow Freight System, Inc., 5 Cir., 1974, 505 F.2d 66; and Resendis v. Lee Way Motor Freight, Inc., 5 Cir., 1974, 505 F.2d 69, which for this very industry and employment practices eliminates all doubts of the decisive significance of flagrant statistical deviations.

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[27] See also Franks, *supra*, at 419; Pettway v. American Cast Iron Pipe Co., 5 Cir., 1974, 494 F.2d 211 at 225, note 34; Johnson v. Goodyear Tire & Rubber Co., 5 Cir., 1974, 491 F.2d 1364, 1371-73; Morrow v. Crisler, 5 Cir. (en banc), 1974, 491 F.2d 1053, 1055; United States v. Hayes International Corp., 5 Cir., 1972, 456 F.2d 112, 120 (Hayes, II); Burns v. Thiokol Chemical Corp., 5 Cir., 1973, 483 F.2d 300, 305; United States v. Jacksonville Terminal Co., 5 Cir., 1971, 451 F.2d 418, 424-36 and 441-442, *cert. denied*, 406 U.S. 906, 92 S.Ct. 1607, 31 L.Ed.2d 815 (1972); United States v. Hayes International Corp., 5 Cir., 1969, 415 F.2d 1038, 1043 (Hayes I); Bing (I) *supra*, at 689; Witherspoon v. Mercury Freight Lines, *supra*, at 498; Brown v. Gaston County Dyeing Machine Co., 4 Cir. 1972, 457 F.2d 1377, 1382, *cert. denied*, 409 U.S. 982, 93 S.Ct. 319, 34 L.Ed.2d 246; United States v. N. L. Industries, Inc., 8 Cir., 1973, 479 F.2d 354, 368-70; Carter v. Gallagher, 8 Cir. (en banc), 1971, 452 F.2d 315, 321, *cert. denied*, 1972, 406 U.S. 950, 92 S.Ct. 2045, 32 L.Ed.2d 338; United States v. Carpenter's Local 169, 7 Cir., 1972, 457 F.2d 210, 214; Parham v. Southwestern Bell Telephone Co., 8 Cir., 1970, 433 F.2d 421; Jones v. Lee Way Motor Freight, *supra*, at 247; Stamps v. Detroit Edison Co., 1973, E.D.Mich., 365 F.Supp. 87, 110; United States v. Central Motor Lines, Inc., *supra*, at 556; United States v. Navajo Freight Lines, *supra*, 6 FEP at 294; United States v. Pilot Freight Carriers, Inc., *supra*, 54 F.R.D. at 522.

But the Government did not stop there. It buttressed its statistical evidence with a massive amount of testimony presented by live witnesses as well as by depositions taken at 10 of the major T.I.M.E.-D.C. terminals reflecting that members of these minority groups with substantial amounts of driving experience had frequently applied initially for and been rejected for the position of LD, and that a substantial number of such qualified persons employed in the city operations unit at each of the 10 terminals had sought and been refused transfer to LD.

Although, with the exception of Memphis (1958-68), there may not have been an explicit no-transfer rule from city to LD the evidence showed a reason in addition to purposeful refusal to hire or transfer minorities. This was the seniority system that prohibited the carry-over of seniority from city to LD for layoff and bidding purposes. Thus the minority employees were locked-in to the positions where they were initially discriminatorily assigned since they would be forced to forfeit their extensive accumulated seniority for bidding and layoff purposes upon transfer to the road.

Of course this practice has been roundly condemned.[28] In *Franks, supra,* at 414 we recently pointed out:

> Though not as drastic as a rigid no-transfer rule, a departmental seniority system discourages transfers and thereby locks a discriminatee into his inferior job by threatening him with loss of his accumulated seniority if he should transfer.

[28] See United States v. Pilot Freight, *supra,* 54 F.R.D. at 522, United States v. Navajo Freight, *supra,* 6 FEP at 276, United States v. Central Motor Lines, *supra,* at 539, 552, 557. The same principle has been recognized in other industries as well. N.L. Industries, *supra,* at 364; United States v. Bethlehem Steel Corp., 2 Cir., 1971, 446 F.2d 652.

The Eighth Circuit only recently observed that:

> The price that the existing seniority plan extracts from the pre-1963 employees for the opportunity to break out of a department to which they were racially assigned is too high, especially since it is to be paid by the same group that has already endured the hardships of past discriminatory practices.

N. L. Industries, *supra,* at 364.

And again this is echoed in stronger terms in *Rodriguez, supra,* at 53, 60, 61. And the pudding's proof being in the eating, this record furnishes fresh confirmation of the wisdom of our declaration in *United States v. Jacksonville Terminal, supra,* at 453 that in "any industry loss of seniority is a critical inhibition to transfer".

Attack of T.I.M.E.-DC and IBT on Evidence

The defendants mount an attack on that portion of the plaintiffs' statistical evidence that compares the proportion of Blacks in the city or Standard Metropolitan Statistical Area (SMSA), where T.I.M.E.-D.C. operates terminals with the proportion of Blacks employed at those terminals. They complain that the SMSA has not been properly defined, and thus it is impossible for them to attempt to rebut the statistics. But the inability to rebut came not from lack of an informed standard. Rather, in most instances for LDs, the inability came from the inexorable zero.[29]

[3] Both as to statistical and testimonial evidence they urge that the evidence of particular incidents of discrimination are too few, too concentrated at certain terminals, and too remote in time to establish a systemwide pattern and practice of employment discrimination. We cannot agree. The plaintiff pro-

[29] For evample, Atlanta with SMSA ratio 77.14% White, 23.35% Negro and a city ratio of 48.40 W, 51.31 N, and 57 White LDs and no Negro; Dallas with SMSA of 83.23 W, 15.98 N, city 74.15 W, 24.01 N, and 20 LDs all White, none Black; Los Angeles with SMSA 85.42 W, 10.84 N, city 77.19 W, 17.88 N, had at LAX and LOS 374 LDs, all but two being White. (See Appendix A to District Court's opinion).

duced evidence of over 40 specific instances of discrimination spread throughout the system of T.I.M.E.-D.C.—instances often egregious and viewed as a whole quite definitely supporting the finding that the pattern and practice of discrimination literally occurred. The terminals at which the Government took depositions are spread throughout the entire T.I.M.E.-D.C. system and for the most part contain the largest LD operations within the system.[30]

[4] On remoteness, the complaint is that the incidents and figures go back too far, some as early as 1957. But for Title VII the past is indeed prologue. We agree with the Fourth Circuit, United States v. Dillon Supply Company, 1970, 429 F.2d 800, 804, that proof is permissible of any "past specific or general act, practice, policy or pattern of racial discrimination which the proof showed had any present discriminatory effect" and thus should be considered by the trial court in such a case.

[5] Under Title VII proof of pre-Act discrimination is always relevant where the present seniority system perpetuates past discrimination. Goodyear, *supra*, at 1374; Local 189 Papermakers v. United States, 5 Cir., 416 F.2d 980 at 988; Quarles v. Philip Morris, Inc., E.D.Va., 1968, 279 F.Supp. 505, 516. In *Jacksonville Terminal, supra*, at 450, we pointed out that "when seniority becomes an issue * * * the past becomes more important."

[6] The Court was not compelled to credit the contention that there were no openings for LD at the time the Blacks applied or sought transfer, or that the applicants failed in filling out forms or seeking the right person. And considering the overpowering prima facie case of pattern and practice the trial court at the liability stage was not required to sustain the counter-

[30] Seven of the ten largest LD operations are located at the ten terminals where depositions were taken. Eleven hundred seventy one LDs are domiciled at the terminals where depositions were taken as opposed to 358 at those terminals where no depositions were taken.

attack on the testimony of individual discriminatees as to credibility, availability or qualification. As we observed in *Hayes* (II), *supra*, at 120

> The inference arises from the statistics themselves and no other evidence is required to support the inference. At this stage of the proceedings it was not necessary for the Attorney General to show the availability of skilled negroes in the community to perform the jobs in question because the burden of going forward and showing the lack of qualified negroes was upon Hayes. This burden is not met by Hayes' attempts to parry specific allegations of alleged discrimination, e. g., the four negroes rejected after failing a typing test and the one turned away for being overweight, or by company officials stating in general terms that no one was refused employment solely because of their race.

[7] Finally, we reject the attempt to discredit the testimonial evidence introduced by the Government or the trial court's conclusions by subjecting them to the analytical steps delineated by the recent case of *McDonnell Douglas Corporation v. Green*, 1973, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668. Both due to its own peculiar factual setting and by its own explicit terms *McDonnell Douglas* is inapplicable to a pattern and practice suit such as the one before us. We dispose of this as we did in *Rodriguez, supra*, at 55-56.

Good Intentions and Recent Improvement

Both T.I.M.E.-D.C. and IBT urge that the pattern and practice finding should not have been made, and that in any event progress by each is such that no mandatory relief was either appropriate or justified.

[8, 9] T.I.M.E.-D.C.'s recent minority hiring progress stands as a laudable good faith effort to eradicate the effects of past

discrimination in the area of hiring and initial assignment.[31] But it is not enough to eradicate the effects of the past discrimination against incumbent minority group members who are presently locked into the positions to which they were initially and discriminatorily assigned. We sounded this note in *Rowe, supra,* at 355

> the problem is not whether the employer has willingly—yea, even enthusiastically—taken steps to eliminate what it recognizes to be traces or consequences of its prior pre-Act segregation practices. Rather, the question is whether on this record—and despite the efforts toward conscientious fulfillment—the employer still has practices which violate the Act. In this sense, the question is whether the employer has done enough.

See also Griggs v. Duke Power Co., 401 U.S. 424 at 432, 91 S.Ct. 849 at 854, 28 L.Ed.2d 158 at 164-65; *Franks, supra,* at 418; Local 53, Asbestos Workers v. Vogler, 5 Cir., 1969, 407 F.2d 1047, 1055; *N. L. Industries, supra,* at 361; Cypress v. Newport News General and Nonsectarian Hospital Assn., 4 Cir. (en banc), 1967, 375 F.2d 648, 658. The Judge was entitled to consider the fact that the significant improvements in T.I.M.E.-D.C.'s employment patterns have occurred subsequent to the initiation of the 1968 Nashville litigation long after the effective date of Title VII. See *Goodyear, supra,* at 1376, n. 36; Jenkins v. United Gas Corp., 5 Cir., 1968, 400 F.2d 28, 33.

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[31] According to the statistics introduced by the defendants in the company's periodic reports to the District Court, total number of minorities employed increased from 7.1% in 1967 to 10.5% in 1972, and to 13% in 1973. During 1971, 16.9% of new hires were members of minority groups and during the first six months of 1973, 72 out of 113 new hires, or 64%, were minority group members. Likewise, during the first six months of 1973, 29 of 95 LDs or 30% belonged to minority groups. Presumably, of course, the 1973 statistics reflected the one-to-one hiring ratio provided by the court-approved consent decree.

IBT likewise emphasizes the Union's efforts to eradicate past discrimination. They point out that in 1970 Article 38, a non-discrimination clause was added to the National Master Freight agreement.[32]

[10] But as with the employer, the issue is not simply what has been done but whether what has been done is enough. Of course, a union is responsible when the seniority system created by its contract perpetuates the effects of past discrimination. See *Goodyear, supra,* at 1381; Robinson v. Lorillard Corp., 4 Cir., 1971, 444 F.2d 791; United States v. St. Louis and San Francisco R.R., 8 Cir., 1972, 464 F.2d 301.

Our careful consideration of the record has convinced us that despite their vigorous attempt, the District Court was entitled to conclude that the defendants have failed to rebut the plaintiffs' prima facie case of employment discrimination. Accordingly the District Court correctly concluded that the defendants have engaged in an extensive pattern of employment practices unlawful under Title VII and that strong remedial action is warranted.

The Remedy

The Affected Class. The Court defined the affected class broadly as all incumbent[33] minority employees who had been

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[32] ARTICLE 38.

Non-Discrimination

The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin.

[33] As the Government's brief (p. 41, n. 80) points out the District Court granted retroactive seniority (to the date of their application) for some of the rejected applicants for new hire, and did not for

hired during the period in which T.I.M.E.-D.C. was engaged in discriminatory assignment and transfer practices. The Court then measurably narrowed the class by the successively declining bidding preference rights to those in App. A, App. B and App. C with similar declining dates of carry-over seniority.

Rightful Place

[11] As this bears on all the relief to be accorded on the reexamination upon remand, we emphasize without repetition each time the doctrine of rightful place. We put it this way in *Rodriguez, supra,* at 61-62:

> We have long subscribed in this circuit to the theory that those who suffer discrimination under Title VII must be permitted to take their "rightful place" when job openings develop. As we said in *Local 189, United Papermakers & Paperworkers v. United States,* 416 F.2d [980] at 988:
>
> > The Act should be construed to prohibit the *future* awarding of vacant jobs on the basis of a seniority system that "locks in" prior racial classification. White incumbent workers should not be bumped out of their *present* positions by Negroes with greater plant seniority; plant seniority should be asserted only with respect to new job openings. This solution accords with the purpose and history of the legislation.
>
> See Note, Title VII, Seniority Discrimination, and the Incumbent Negro, 80 Harv.L.Rev. 1260 (1967). Thus, black and Mexican-American city drivers, many of whom would now be road drivers but for the discrimination of the defendants, must be given an opportunity to transfer to the road as road driving job openings develop.

See also *Franks, supra,* at 416; *Pettway, supra,* at 222-25; Bing (II) v. Roadway Express, Inc., 5 Cir., 485 F.2d 441 at 450; *Jacksonville Terminal, supra,* at 452-53; *189 Paperworkers, supra,* at 988; *Bethlehem Steel, supra,* at 658-61.

The purpose of seniority carry-over under the rightful place doctrine is to give the discriminatee the incentive to transfer by

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others. This appeal does not pertain to that issue, but is concerned only with the rights of incumbent employees who are members of the affected class.

But since the affected class has to be reexamined to eliminate the disparities between App. A, App. B and App. C, the District Court has to have great flexibility on remand to consider former applicants who never became incumbents. The priorities granted to such former applicants under App. A or App. B may have to give way as will carry-over seniority dates, since we have rejected the notion of super seniority. In Franks v. Bowman Transp. Co., 5 Cir., 1974, 495 F.2d 398, 417, *rehearing en banc denied,* — U.S. —, 95 S.Ct. 1421, 43 L.Ed.2d 669 (1974), we have recently observed that

> In seeking application-date seniority for members of class 3 (black applicants who applied for OTR jobs before January 1, 1972) appellants ask us to take a giant step beyond permitting job competition on the basis of company seniority. They ask us to create constructive seniority for applicants who have never worked for the company. Granting that the black OTR applicants who were rejected on racial grounds suffered a wrong, we do not believe that Title VII permits the extension of constructive seniority to them as a remedy.

The District Court specifically described App. C as those individuals either for whom no evidence was offered, or who were no longer employed by the Company. So it would seem that all former employees and rejected applicants should literally have been included in App. C. On appeal, however, the Government disclaims any attempt to seek review of the District Court's failure to grant individual relief to the rejected applicants or former employees in App. C. The issue then is really not before us as to these applicants for jobs who were not incumbents.

But in any event, we would caution all parties that the citing of *Franks* is merely the repetition of the current state of the law in the Fifth Circuit. Certiorari has recently been granted by the Supreme Court on *Franks* and of course all wait with baited breath for the outcome produced by the great people east of the Potomac River. The flexibility we have given the District Court on remand is elastic enough to accommodate whatever wisdom will come from the Highest Court.

removing the major disincentive to such transfer (loss of accumulated seniority). It also gives the discriminatee enough seniority in the new unit to permit effective competition for advancement and to provide the protection against the threat of layoff to which the discriminatee would be exposed because of the initial discrimination. *Bethlehem Steel, supra,* at 660; *Bing (II), supra,* at 450; *Local 189 Papermakers, supra,* at 988.

Qualification Date

[12] As with "rightful place," just discussed, this too is a recurring factor which has to be taken into account as relief is accorded on the remand. Again in *Rodriguez, supra,* at 63, we pointed out that "in *Bing* we approved a 'qualification date' formulation—the date a transferee had the experience necessary to qualify him for a road driving job. 485 F.2d at 451."

In describing its operations we rejected the recent criticism of this rule by the Sixth Circuit as made in Thornton v. East Texas Motor Freight, 6 Cir., 1974, 497 F.2d 416. *Rodriguez,* 505 F. 2d at 64.

Since there was no uniform system-wide driver experience requirement we do not undertake to blueprint what the qualification date may or should be for LDs or other jobs from which Blacks and SSAs have been excluded.[34] The evidence on remand may justify some non-uniformity so long as the standard laid down meets the test of *Rodriguez.*[35]

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[34] Since the discrimination has been in denying minorities the opportunity to take tests, etc. for transfer to LDs, for example, the "Qualification Date" is not limited to the date on which the class member is finally allowed to take the test pursuant to the Court's decree. It may, and often will, be fixed at the date in the past on which the person was in fact qualified had he been given the opportunity to establish it.

[35] See e. g., 505 F.2d at 63 n. 29 and 64 n. 30. The Government recognizes it may vary. See, e. g., Atlanta limiting seniority to August 1, 1958, the date on which LD positions for Whites or Blacks was established at that terminal.

In the Supplemental Opinion, the District Court also ordered included in App. C those White employees hired into city operation jobs at the Memphis terminal before August 8, 1958 who had not yet transferred to LD as of that date (Supp.Op., p. 2, para. III, i).

Descending Priority—App. A, App. B, App. C. The District Court prescribed three classes of discriminatees, App. A, App. B, App. C, and gave to those in App. A first priority for bidding (and layoff) to be followed next by the few in App. B. and the remaining some 300 were put in App. C. Equally important were the declining carry-over seniority dates—those in App. A the effective date of Title VII (July 2, 1965), in App. B the date of the filing of the Texas suit (January 14, 1971), and lastly for App. C the date a discriminatee qualified for and obtained the new position.

The classification was made on the basis of the showing of relative prejudice. For those in App. A the live testimony (in Court or by deposition) showed positive discrimination and prejudice. Those in App. B likely suffered but the demonstration was not so positive. As to those in App. C the Court's final order held that although "all are members of a class of discriminatees" there was "either—no evidence presented of discrimination against—" them "or they are no longer employed by T.I.M.E."

[13] It is clear that the Judge thought that there had to be proof of individualized discrimination and prejudice. This misconceives both the purpose and procedural structure of a pattern and practice suit (see note 3, *supra*). Congress circumscribed the circumstances in which the heavy power of the Government through the Attorney General could enter the lists. To trigger the suit discrimination may not be merely isolated, sporadic, or non-repetitive. United States v. Iron Workers, Local 86, 443 F.2d 544, 552, *cert. denied,* 404 U.S. 984, 92 S.Ct. 447, 30

L.Ed.2d 367; United States v. Mayton, 5 Cir., 1964, 335 F.2d 153, 159; United States v. Ramsey, 5 Cir., 1964, 331 F.2d 824, 837; Jacksonville Terminal Co., *supra*, at 441.

To permit the Court to grant any relief it must find pattern and practice. The proof through statistics and live swearers is directed toward that principal issue plus, in a more general sense, facts bearing on the nature, kind and extent of the relief which is either appropriate or required. It would be contrary to a claim of this structure to have to offer testimony concerning every member of the affected class. By its very nature it is a kind of class action maintained by the sovereign to vindicate the rights of the whole class.[36]

With the pattern and practice established to the satisfaction of the Judge, it would defy reason and waste precious judicial resources for the Court either to require or permit individualized proof for every member of a class here numbering nearly 400 but frequently involving thousands for whom effective relief could not be achieved were we to approve the approach of the District Court here. Whatever evidentiary hearings are required for individuals can well be postponed to the remedy.

[14] The result is that we cannot accept the gradations of App. A, App. B, and App. C. For all we know, at this stage some on App. C may have suffered discriminations even more egregious than those whom the Government singled out to be persuasive witnesses to establish pattern and practice. All those on App. A, App. B and App. C are entitled to be given an opportunity to bid on future vacancies in the specified job classifications to which they are allowed to transfer by the District Court's order on the basis of their seniority and, if they qualify for those

[36] Of course they are not identical. *Rodriguez, supra*, at 66, points out some distinctions between private plaintiffs' class actions and a Government pattern and practice suit, particularly as to the interests to be served.

jobs, to be permitted to exercise their full seniority in such jobs for all purposes, including bidding and layoff.[37]

We believe that such a bidding procedure is designed to eradicate the present effects of past discrimination by permitting all members of the affected class rather than just a selected few to have the opportunity to advance to the positions that they might have achieved in the absence of racial discrimination.

As is true of the relief mechanism of the District Court's order, such a bidding procedure provides all members of the affected class at a *given terminal* the opportunity to bid on a vacancy in the LD position prior to persons who are not a member of the affected class, whether incumbent employees or otherwise.

[15] Nor does this bidding procedure amount to reverse discrimination in violation of § 703(j) of the Act.[38] It is now well established that granting the first opporutnity to bid on future vacancies to members of such an affected class is a permissible, and in some instances essential, remedy where it is

[37] Those who have already moved to vacancies in such job classifications will be permitted to exercise their full seniority in those jobs and likewise for all purposes.

[38] 42 U.S.C.A. § 2000e-2

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an inbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

necessary to effectively eradicate the present effects of past discrimination. See *Bing (II), supra,* at 485; *Franks, supra,* at 413; *Vogler, supra,* at 1054; *Pettway, supra,* at 248. Indeed, in the discriminatory hiring context preferential treatment in the form of temporary quota relief has frequently been ordained by the courts.[39]

App. A, App. B, and App. C Seniority Carry-Over Dates

Tied into the App. A, App. B and App. C descending priorities for bidding and layoff purposes was a similar tri-part decline in seniority carry-over dates. We find none of them acceptable.

[16] To the most favored group (App. A) the date fixed was the effective date of the Act (July 2, 1965). But under the rightful place theory members of the affected class of discriminatees have regularly been allowed to use full seniority to bid on vacancies and to continue to use it for bidding and layoff purposes in the new position. *Franks, supra,* at 416; *Pettway, supra,* at 248; *Jacksonville Terminal, supra,* at 454; *Quarles, supra,* at 521. And that includes *full* seniority even though it may extend back beyond the "effective date" of Title VII since seniority provisions that call for the forfeiture of accumulated seniority on transfer serve to *presently* perpetuate the effects of pre-Act discrimination. *Bing (II), supra,* at 451; *Jacksonville*

[39] See *Morrow, supra,* at 1056, NAACP v. Allen, 5 Cir., 1974, 493 F.2d 614; Carter v. Gallagher, 8 Cir. (en banc), 1971, 452 F.2d 315, *cert. denied,* 1972, 406 U.S. 950, 92 S.Ct. 2045, 32 L.Ed.2d 338; United States v. Wood, Wire & Metal Lathers Local No. 46, 2 Cir., 1973, 471 F.2d 408, 413, *cert. denied,* 412 U.S. 939, 93 S.Ct. 2773, 37 L.Ed.2d 398; United States v. Ironworkers, Local 86, 9 Cir., 443 F.2d 544, 553-54, *cert. denied,* 404 U.S. 984, 92 S.Ct. 447, 30 L.Ed.2d 367; Vulcan Society v. Civil Service Commission, 2 Cir., 1973, 490 F.2d 387, 399; Bridgeport Guard Inc. v. Members of Bridgeport Civil Service Commission, 2 Cir., 1973, 482 F.2d 1333, 1340-41.

Terminal, supra, at 454; *Bethlehem Steel, supra,* at 666. Indeed, there is no precedent we are aware of which limits carry-over seniority to the effective date of the Act.

[17] The App. B limitation to the date of filing of the Texas suit (January 14, 1971) fares no better. First, it now flies in the teeth of *Rodriguez* in which we reiterated the qualification date principle despite the Sixth Circuit's criticism and use of the date of application for transfer or of filing an EEOC charge. 505 F.2d at 64. Next, it ignores the accepted principle that where there has been a showing of classwide discriminatory practices coupled with a seniority system that tends to freeze or perpetuate the effects of that discrimination, a member of the affected class need not actually show that he or she unsuccessfully attempted to transfer to the excluded position. *Bing (II), supra,* at 451; *Bing (I), supra,* at 689; *N. L. Industries, supra,* at 369; *Leeway Motor Freight, supra,* at 247; *Cyprus, supra,* at 653; *Pilot Freight, supra,* at 522.

The Courts have as a practical matter recognized that a member of the affected class may well have concluded that an application for transfer to an all White position such as LD was not worth the candle.[40]

And, of course, the App. C limtation to the date the class member somehow succeeds to a vacancy is worse. Aside from the fact that this exposes App. C members to discrimination at the hands of their fellow victims (App. A and App. B), it means for all practical purposes that the discrimination in favor of Whites continues.

[40] In *Bing (II), supra,* at 451, we recently noted that

> If an employee realizes full well that blacks simply are not hired as road drivers, why should he bother to apply? Certainly a few, such as Bing, have the courage to fight "the system," but it is equally certain that others must have been intimidated and discouraged by Roadway's discriminatory practices.

This means that for all members of the class there should be full company employment seniority carry-over for bidding and layoff purposes, subject of course to the proper application of the qualification date principle (see n. 35, *supra* and related text). On remand and after appropriate evidentiary hearings the District Court's decree must be suitably modified to eliminate the prescribed priorities, the prescribed seniority dates, and the prescribed differences therein, as between those in App. A, App. B and App. C.[41]

Individual Relief

We do not think it necessary for the trial court to reexamine the findings as to the discrimination against those in App. A or App. B and the prejudice suffered by each. But as the A, B, C priorities and their distinctive seniority dates are now eliminated, the employment position of each may be affected and call for further adjustment.

[18] Although not attacked here as such (see note 33, *supra*), since the trial court must make a basic reexamination to assure that all members of the affected class benefit in the relief we prescribe, we recognize that there may be need for two things. The first is an evidentiary exploration of the distinction between incumbents, former employees and applicants who were never hired. Second, there should be a legal determination consistent with all our cases concerning relative relief (including bidding priorities and seniority dates) appropriate to each.[42]

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[41] According to the District Court's decree, the seniority date allowed App. A was July 2, 1965, the effective date of Title VII, except for those who were employed later.

[42] Of the 30 in App. A, 20 of these are incumbents excluded from LDs. Of the remaining 18 covered by specific testimony, 9 were former employees, 2 of whom were put in App. A, 1 in App. B, and the balance in App. C together with all rejected applicants.

Nashville Servicemen

[19] The District Court ordered that proper training should be provided for the six Nashville Black servicemen (included in App. A) for whom there was specific evidence in the record of exclusion from the city operations and mechanic and partsman classifications, and that they be allowed to bid on future vacancies in the classifications of dockmen, partsman, and mechanic and if qualified should be permitted to carry over seniority as of July 2, 1965, the effective date of the Act. We approve the District Court's remedial action but modify it in several respects. First, the July 2, 1965 date is out and full employment seniority as discussed generally will apply. Next, the training transfer remedy prescribed by the District Court should apply to *all* Blacks hired into the serviceman classification at the Nashville terminal prior to 1969[43] (the date when the first Black was hired as a regular dockman in Nashville). Of course as to all others, servicemen are entitled, on qualification, to bid for LD with appropriate seniority.

The Government has one further objection. The 1970 union contract abolished the requirement that servicemen at the Nashville terminal were required to forfeit accumulated seniority in order to transfer to the mechanic or partsman's classification. However, the new contract provided that transferees would be required to qualify for the positions on the basis of requirements set forth by an employer-union committee.

[20] The United States argues that the new employer-union committee violates Title VII in that it imposes a new and more stringent requirement on Blacks now seeking to transfer from serviceman to mechanic or partsman than was imposed on Whites seeking a similar transfer prior to 1970. While the new requirement may indeed be different, there is nothing in the

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[43] The other 10 were included in App. C.

record to compel the conclusion that by allowing the union to participate in the formulation of job qualification requirements it is in any way more onerous than the prior practice of leaving questions solely to the employer.

But we think that in the modified decree specific provision should be made to assure continuing power in the District Court to monitor performance of employment practices by the Joint Committee. The burden is on the Teamsters and T.I.M.E.-D.C. to demonstrate that the process is fairly administered without minority discrimination.

Memphis Transfer Policy

[21] As mentioned previously, the T.I.M.E. Memphis terminal discontinued its policy of allowing White city drivers to make extra line runs and transfer to the line in 1958 in order to avoid having to grant similar privileges to Black city drivers. The Government requested that all Whites hired into the city driver department prior to August 8, 1958 (apparently the date when the practice was discontinued) be allowed to bid on and if qualified transfer to future vacancies in the LD position with carry-over seniority as of August 8, 1958.

The District Court implicitly accepted the contention that these Whites were the victims of a racial practice directed against Blacks. But consistent with its approach generally about the need for individualized testimony, the District Court put them in App. C with its very junior priority and seniority. Of course this treatment falls with our rejection of the App. A, B, C structure.

Layoff For Vacancy

[22] In connection with provisions in the Union contract for priority bidding rights after a layoff, the Court prescribed that

a vacancy would not be deemed to exist unless it continued for three years.[44]

We recognize that the Union contract provision granting laid-off LDs a three-year period in which they may move into vacancies at their home terminal without competition was not adopted for discriminatory purposes. Nevertheless, we believe that to allow LDs a three-year priority right on future openings would unduly impede the eradication of past discrimination. See *Hayes (II), supra,* at 118; Rowe v. General Motors Corp., 5 Cir., 1972, 457 F.2d 348, 358; *Jacksonville Terminal, supra,* at 450-51. Therefore we modify the decree to provide that when a vacancy which is not a purely temporary one arises in the LD position at a T.I.M.E.-D.C. terminal, any LD on layoff at that terminal may compete against members of the affected class on the basis of full employment seniority.

The individual with the greatest employment seniority will be given the first opportunity to qualify. We think that such modification will accommodate the discriminatees' right to advancement with the laid-off LDs "security interest" in his former position.

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[44] Par. 9(a) of the District Court's final order defined a vacancy as

> any opening which is caused by the transfer or promotion to a position outside the bargaining unit, death, registration or final discharge of an incumbent, or by an increase in operations or business where, ordinarily, additional employees would be put to work. A vacancy shall not exist where there are laid off employees on the seniority roster where the opening occurs. Such laid off employees shall have a preference to fill such laid off positions when these again become open without competition from the individuals granted relief in this case. However, if such layoff continues for three consecutive years the position will be deemed as "vacant" with the right of all concerned to compete for the position, using their respective seniority dates, including those provided for in this Order.

Southern Area Conference Modified Seniority

As detailed earlier, the Teamsters at terminals in the Southern Area Conference (see note 5, *supra*) have adopted a Modified Seniority system under which laid-off LDs may compete for vacancies or bump junior LDs at other terminals within the Southern Conference. The District Court, while recognizing that the Southern Conference Modified Seniority provisions are neutral on their face, determined that unaltered, they would tend to impede the advancement of Blacks and SSAs into LD positions within the Southern Conference since laid-off LDs could well fill the vacancies as they occur or even keep vacancies from occurring by bumping junior LDs at particular terminals.

[23] Therefore the District Court provided the following modifications. Laid-off LDs in the Southern Conference may continue to bump junior LDs at other terminals. But where a vacancy occurs, a laid-off LD from another terminal cannot transfer in and take priority over any affected class members on App A or App. B. In view of our disapproval of the District Court's tri-part division of the affected class, we will adapt the decree to provide that a laid-off LD may not move to another terminal where a vacancy exists and thereby automatically take precedence over *any* member of the affected class at that terminal. Of course, the laid-off LD may still move into the vacancy whenever there are no members of the affected class remaining who have not been offered the opportunity to qualify for the LD position.

The District Court further provided that the laid-off LD who bumps a junior driver at another terminal may exercise his right of recall when an opening occurs at his own terminal without competition from members of the affected class. However, when an opening occurs at the terminal where the bump took place, members of the affected class may compete on the basis of seniority with the LD on layoff who was bumped (or with any other LD on layoff at that terminal).

Finally, in an effort to modify the Modified Seniority provisions in a manner that would speed up the advancement of discriminatees into the LD position, the District Court provided that members of the affected class in the Southern Conference may bid on LD openings at other terminals within the Conference in competition with employees at the terminal on the basis of employment seniority after all members of the affected class at that terminal have been given the opportunity to bid on the position. This does not have the effect contended since this provision applies only after the priorities prescribed have been exhausted at the terminal where the vacancy occurs.

Aside from our slight modification, the District Court did not abuse its discretion in adjusting the Southern Conference Modified Seniority bidding procedure so as to accommodate the effectuation of its remedy.

Victims and White Incumbents

[24] In its original opinion the District Court provided that those in App. C were entitled to vacancies "before the general public". This, of course, subordinated them to White incumbents (not members of the class) who had no seniority for the position. By supplemental opinion and order the Court recognized that the removal of discriminatory practices would be delayed and the possibility would exist that inequities would result. Consequently it ordered that those in App. C "shall also be given preference over other . . . TIME employees who have no seniority in the category where the vacancy occurs".

The District Court's action in the supplemental opinion was undoubtedly precipitated by the fact that the victims were divided into App. A, B and C. Since App. A and B were given preference over C and those in App. C were given relatively small relief in comparison, the Court thought it only fair to give those in App. C a priority over everyone else in relation to the relief awarded them.

In light of our abolishment of the App. A, B and C classification, however, the District Judge should have the opportunity to re-examine the preference given to those in App. C over everyone. With all the victims now in one class, the record should be developed when necessary to examine the impact of such a preference on current non-victim, incumbent employees who have been employed by the company longer than a particular victim. Consequently this portion of the remedy will be vacated for further consideration.

Remand

The case is remanded for further evidentiary and judgmental proceedings[45] consistent with this opinion.[46]

Remanded.

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[45] With respect to the problems of the positions or rights of particular individuals, the District Court should feel free to fully use special masters, since with the large numbers of people involved, this presents "a showing that some exceptional condition requires it." F.R.Civ.P. 53(b).

[46] Except for those portions of the District Court's order which we have disapproved or modified, the balance of the decree remains intact, subject to such modifications as the District Court deems appropriate as a part of the final order entered by the District Court on remand.

ORDER
Of the District Court for the Northern District of Texas,
December 13, 1971; 335 F.Supp. 246

In the United States District Court
For the Northern District of Texas
Lubbock Divison

United States of America, Plaintiff, vs. T.I.M.E.-DC, Inc. and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and the International Association of Machinists and Aerospace Workers, AFL-CIO, Defendants.	Civil Action No. 5-868

Order

(Filed December 13, 1971)

The Court has under consideration the motion of plaintiff to add a party defendant and to submit amendments to the complaint.

Plaintiff's original complaint is against T.I.M.E.-DC, Inc., a nationwide employer in the transportation industry, and two international unions, seeking injunctive and declaratory relief. It appears that the employer has itself, and through its predecessors, entered into various labor contracts with approximately 70 local labor unions representing groups of employees at differ-

ent terminals and other facilities of T.I.M.E.-DC throughout the United States. Each of these contracts is directly between the employer and the local labor union, and the two defendant international unions are not signatory parties to any of said contracts. Plaintiff alleges that because of said contracts and the practices thereunder, the defendant employer follows a policy and practice of discrimination against Negroes and Spanish-surnamed employees, denying them an equal right to advancement and other employment benefits.

The defendant international unions have moved to dismiss or to stay the proceedings in this case until such time as the joinder of the local unions has been effected. Plaintiff has now moved to join Local No. 745 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as a defendant individually and as a representative of a class. This local is headquartered within the Northern District of Texas.

It has been determined by the Court that the ultimate judgment of this Court will, if favorable to the plaintiff, require in all probability the alteration of the contractual agreements between T.I.M.E.-DC and the local unions. Further plaintiff is seeking injunctive relief against the employer and those in concert with the employer, ordering them to cease any discriminatory practices pursuant to such labor contracts. It has been urged upon the Court that each contract differs according to the nature of the particular local union and the local circumstances involved, and that there is not a common question of fact in all of said contracts. Defendants insist therefore that Local 745 should not be permitted to be joined in this action as a representative of a class. It has been further pointed out that Local 745 is a local of the International Teamsters Union while some of the contracts are with locals of the International Machinists Union, and that 745 could not therefore be representative of this second group.

This Court is of the opinion that should it finally enter an order and judgment in favor of the plaintiff, such a judgment would, as a practical matter, be meaningless insofar as it pertained to any local union that was not actually before and subject to the jurisdiction of this Court. Any judgment that alters or amends the contractual rights of parties should be done only when those parties are not only subject to the *in personam* jurisdiction of the court but are also personally before the court. This is even more important when injunctive relief and remedies sought for enforcement of the injunction are involved. If such relief were to be ordered by this Court against the local unions who are represented only as members of a class, it would only mean that the merits of the local case would have to be determined again in some other proceeding in order to obtain enforcement. Before such injunction could be enforced, another court would have to inquire into the particular facts involving that particular local union in its dealings with T.I.M.E.-DC.

While it is true that *Washington v. Lee*, 263 F.Supp. 327 (M.D. Ala. 1966), aff'd 390 U.S. 333 (1968) does in fact recognize that injunctive relief can be afforded against defendants who are members of a class, the suit now under consideration involves not only injunctive relief but also the varying terms of some 70 different contracts with the local unions. To enforce a class injunction against the sheriffs of Alabama, each of whom is singly in control of discrimination in his own jail (*Washington v. Lee, supra*) is a far cry from attempting to enforce changes in contractual agreements between a nationwide employer and local labor unions having as many as 10,000 members in one local.

The matters to be decided in this case require that the deciding court have *in personam* jurisdiction and that the defendants be personally before the Court. In addition, this Court also finds that there are not sufficient common questions of

fact to justify the use of Rule 23, Federal Rules of Civil Procedure, and that Local 745 could not fairly and adequately represent the members of the class. Although the ultimate question is the same—that of discrimination—the evidentiary facts are so diverse as to render a class action unfeasible. It seems apparent to the Court that each local should be given the opportunity to appear and be heard on its own facts and its own defenses.

It is therefore Ordered that:

I

The defendant unions' motion to dismiss will not be ruled upon at this time, but such motion will be carried along with the trial of the case on its merits, and their motion to stay the proceedings will be granted to the extent hereinafter set forth.

II

The parties will not be required to comply with the pre-trial schedule heretofore set pending further notice by the Court.

III

Permission is here Granted to plaintiff to join Local 745 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as a defendant individually, but not as a representative of a class.

IV

The plaintiff is hereby Ordered to determine if it desires to prosecute its cause of action against any other local unions that have contracts with T.I.M.E.-DC. This Court will be notified by plaintiff on or before February 1, 1972 as to whether or not

plaintiff desires to file actions against local unions in the proper district court having jurisdiction thereof. If the plaintiff desires to proceed against such local unions, same shall be forthwith filed and this Court notified, and this Court will then determine the proper procedures for multi-district litigation under the provisions of Title 28, U.S.C. § 1407. If plaintiff does not desire to file such additional suits, this Court should be immediately notified, and as soon as the amendment has been filed against Local 745 this Court will notify the parties of the setting of this case against the defendants presently named and Local 745.

The Clerk will furnish a copy hereof to each attorney.

Entered this 13th day of December, 1971.

/s/ HALBERT O. WOODWARD
United States District Judge

ORDER
Of the District Court for the Northern District of Texas
January 20, 1972; 4 F.E.P. Cases 875

In the United States District Court
For the Northern District of Texas
Lubbock Division

United States of America,
Plaintiff,
v.
T.I.M.E.-D.C., Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO,
Defendants,
Consolidated With
United States of America,
Plaintiff,
v.
T.I.M.E. Freight, Inc. (Now Known as T.I.M.E.-D.C., Inc.) and Local 480, International Brotherhood of Teamsters,
Defendants.

Civil Action No. 5-868.

Civil Action No. 5-897.

Order

I. *Status of the Pleadings*

The United States of America, through the Attorney General, filed its original complaint against T.I.M.E.-DC, a national motor freight carrier, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an international labor union, alleging violations of the Civil Rights Act of 1964 (78 Stat. 253), 42 U.S.C. 2000e *et seq*. Subsequently, a motion was made and granted to add International Association of Machinists and Aerospace Workers, AFL-CIO, as party defendants, and all defendants have now answered.

Defendant T.I.M.E.-DC is a common motor carrier with forty-nine terminals in twenty-four states, employing approximately 6,500 persons. The defendant international unions, through their affiliated locals, are alleged to be the exclusive bargaining representatives of the majority of the employees of T.I.M.E.-DC. The burden of the complaint is that T.I.M.E.-DC follows a policy or practice of discrimination in employment against Negroes and Spanish surnamed persons in the following particulars:

(a) refusing to recruit, hire, transfer and promote Negro and Spanish-surnamed persons on an equal basis with whites;

(b) hiring or assigning job classifications on the basis of race or national origin, with Negro and Spanish-surnamed employees being assigned to lower-paying or less desirable jobs while higher-paying and more desirable jobs are reserved for whites;

(c) refusing to employ Negroes and Spanish-surnamed persons as non-regular employees and denying these persons the opportunity to become regular employees on the same basis as whites;

(d) refusing to promote and transfer Negro and Spanish-surnamed employees to higher positions on the same basis as whites.

The defendant unions are alleged to be parties to collective bargaining agreements with T.I.M.E.-DC which provide for accumulation of separate lines of seniority within each job classification and which therefore tend to prevent transfer from one classification to another. If, as plaintiffs allege, Negro and Spanish-surnamed employees are assigned as a matter of policy or practice to less desirable classifications, such agreements would reinforce the pattern of keeping those persons trapped in lower classifications.

Plaintiff seeks injunctive relief to prohibit defendants from engaging in such practices and from failing to take adequate steps to correct the effects of past discrimination.

In 1968, the United States of America filed its complaint in the United States District Court for the Middle District of Tennessee, Nashville Division, against the company then known as T.I.M.E. Freight, Inc., now T.I.M.E.-DC, alleging certain discriminatory practices in the Nashville office. Subsequently, permission was granted to plaintiff to join Local 480, International Brotherhood of Teamsters, as a party defendant, and both defendants have duly answered.

The specific allegations and prayers for relief against the defendants in the Tennessee case were substantially identical to those in the action later filed in this Court; for this reason, the Tennessee case was transferred to this Court and the two cases have been consolidated for trial.

II. *Motions Before the Court*

The following motions have been filed:

1) Motions by both international unions that they be dismissed because they are not parties to any of the contracts or practices alleged.

2) Motion by plaintiff, the United States of America, to add Local No. 745 of the International Brotherhood of Teamsters, a Dallas local, both individually and as representative of a class of all locals having similar contracts with T.I.M.E.-DC.

3) Motion by T.I.M.E.-DC to dismiss because of failure to join indispensable parties: namely, all the other local unions having similar contracts with T.I.M.E.-DC; or, in the alternative, to limit the trial issues to those involving solely the parties now before the Court.

As to Motion No. 1, the Court has noted that although the international unions were not themselves signatory parties to any of the contracts in question, they have been alleged by plaintiff to have been vital parties to the bargaining negotiations from which those contracts resulted. In view of these allegations, it is the opinion of this Court that they are proper parties to this suit, and said motions to dismiss by the international unions are therefore DENIED.

Motion No. 2, to join Teamsters Local 745 individually and as representative of a class, was determined by the Court on December 13, 1971, and the ruling denied the motion for class action, but gave plaintiff permission to add Local 745 individually as a party defendant. In addition, the Court granted plaintiff permission to file suits against all the other involved locals and to then proceed for consolidation of all suits under the multi-district litigation practice. Plaintiff has declined both to add Local 745 individually and to proceed against any other locals, and has requested that the case be set for trial with the parties before the Court.

Motion No. 3, the motion of T.I.M.E.-DC to dismiss, presents a more complex problem. Were it clear to the Court that any relief granted would necessarily affect rights of local unions who are now under contract with T.I.M.E.-DC and who are not before the Court, there would be no question but that the case

should be dismissed for failure to join indispensable parties. But it appears to the Court that the allegations and prayers for relief present a great many issues regarding the practices and policies of T.I.M.E.-DC itself which can properly be adjudicated in the absence of any other parties. Further, it is obvious that even the contractual issues can properly be adjudicated as they involve Local 480, the Tennessee local now before the Court. The motion of defendant T.I.M.E.-DC to dismiss for failure to join indispensable parties is therefore DENIED.

This Court is of the opinion that the primary goal of the Civil Rights Act of 1964 would be thwarted by dismissing this suit and requiring a multiplicity of suits to be tried before resolving the issues now properly before this Court. And if, in fact, the evidence shows that the international unions are active in the negotiations of such contracts or in effect control the terms of such contracts on behalf of their locals, then ample relief could be afforded against the international unions as well as against employer. It is recognized that any remedy afforded by this Court would be granted only as to the named parties defendant. *Russell v. American Tobacco Company*, 3 F.E.P.T. Cases 201, (U.S.D.C. M.D.No.Car., 1971).

If the Court finds that the relief sought would force upon a defendant a breach of contract with a signatory party not before this Court, serious consideration would be given to denial of such relief. However, the pleadings and briefs indicate that at least some types of relief would be available without causing such a conflict.

T.I.M.E.-DC, in its brief, has informed the Court that additional time is needed for trial preparation and that the trial itself will demand several weeks. They have suggested, without requesting, that it would be well for the question of whether the locals are indispensable parties to be decided by interlocutory appeal to the United States Court of Appeals for the Fifth Circuit under the provisions of 28 U.S.C. 1292(b). This matter not now being before the Court, the Court hereby directs that any such motion for interlocutory appeal be filed in this Court on or before February 15, 1972. If the motion is denied, the case will proceed to trial and is tentatively set on the non-jury docket for May 1, 1972 at 10:00 a.m. in Lubbock, Texas. The previous setting of April 4, 1972 is hereby vacated, as the Court had overlooked a request by counsel regarding a prior commitment during that period.

The pre-trial procedures heretofore ordered will be complied with except as modified above and except that each step may be delayed for thirty days due to the later trial setting.

The Clerk will furnish a copy hereof to each attorney.

ENTERED this 20th day of January, 1972.

/s/ HALBERT O. WOODWARD
United States District Judge

OPINION
Of the District Court for the Northern District of Texas
October 19, 1972; 6 F.E.P. Cases 690

In the United States District Court for the
Northern District of Texas

Lubbock Division

United States of America, Plaintiff, v. T.I.M.E.-DC, Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO, Defendants.	Civil Action No. 5-868
United States of America, Plaintiff, v. T.I.M.E. Freight, Inc. (now T.I.M.E.-DC, Inc.) and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Defendants.	Civil Action No. 5-897

Memorandum Opinion

The United States brings this suit against defendants T.I.M.E. D.C., Inc. (hereinafter referred to as TIME), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as Unions) alleging discrimination in employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq*. The International Association of Machinists and Aerospace Workers, AFL-CIO was joined as a defendant in Civil Action No. 5-868 on April 21, 1971.

This court has jurisdiction over the parties and subject matter in this action by virtue of 28 U.S.C. § 1345; Civil Rights Act of 1964, 42 U.S.C. § 2000e-6(b).

Defendant TIME is engaged in trucking operations throughout the United States and is an employer within the meaning of 42 U.S.C. § 2000e(b) and is engaged in an industry affecting commerce within the meaning of 42 U.S.C. § 2000e(h). Defendant Unions are labor organizations within the meaning of 42 U.S.C. § 2000e(d), and are engaged in an industry affecting commerce within the meaning of 42 U.S.C. § 2000e(e).

T.I.M.E. D.C. Inc. is the name of a trucking concern spawned out of the merger and acquisition of various smaller firms throughout the country, to-wit: Los Angeles Motor Express, D.C. International, Inc., T.I.M.E. Freight, Inc., Texas-Arizona Motor Freight, Super Service Motor Freight, Inc., Southeastern Trucking Lines, Southwestern Freight Lines, Inc., and Intercity Motor Express (which later became T.I.M.E., Inc.). T.I.M.E. D.C. is used in this opinion in reference to all the above named corporations as well as to the present corporation.

The cases being consolidated, trial on the merits began before the Court on May 3, 1972. All parties and their attorneys were present and testimony and evidence were heard and depositions were introduced which had previously been taken in this cause. Trial of the case ended on May 12, 1972 by a Consent Decree

in Partial Resolution of Suit. That decree is here referred to and made a part of this opinion for all purposes.

The Partial Decree provided, among other things, that TIME would revise its hiring and promotional practices so that more minorities would be hired in the future.

The Government names specific individuals as those who were allegedly victims of TIME's discriminatory hiring practices. Plaintiff has submitted two lists in that regard: one listing individual discriminatees and the amount of monetary damages they have suffered, and another listing individual discriminatees with suggested specific equitable relief to be afforded each individual. This last instrument was filed with the Clerk on June 19, 1972 and is designated "Individuals for Whom Plaintiff Seeks Relief." The Consent Decree provided that TIME D.C. would pay $89,500.00 to compensate individual discriminatees as named on list number one for monetary damages suffered. In regard to those claiming specific equitable relief, the Consent Decree provided:

> 13. All job vacancies at T.I.M.E. D.C. terminals and other facilities at which it employs personnel shall be filled in the following sequence:
>
> > (a) By those persons who may be found by the Court, if any, to be individual or class discriminatees suffering the present effects of past discrimination because of race or national origin prohibited by Title VII of the Civil Rights Act of 1964.

By this order therefore, this Court has the final task in this suit—to determine those individuals, if any, who are entitled to relief under Paragraph 13(a) of the Consent Decree. The determination involves a three step process: 1) was there a general plan and practice of discrimination by TIME; 2) was there discrimination against a person either as an individual or

as a member of a class; and 3) what relief should be given each individual discriminatee.

A brief and general description of TIME's employee hierarchy should be given so that a discussion of any discriminatory practices can be more easily understood. Servicemen perform the most unskilled task of greasing trucks and changing tires within the yard. Mechanics and partsmen also work within the yard. Hostlers, checkers, and dockmen are responsible for servicing and loading trucks within the yard. Trucks are loaded according to size and destination. Light and heavy duty trucks deliver within a city or surrounding locale. Heavy trucks are also loaded for long distance or "line" runs. Line runs are considered the most desirable of the driving jobs because of generally higher pay and less physical loading and unloading duties. The city drivers usually have to unload their own trucks and contend with city traffic.

All categories within the trucking hierarchy are unionized. Seniority within a job category is governed by a "board"; the employee with the longest tenure within a job category being number one on the board and the most recently hired employee being the last number on the board. There is also a status within a job known as "casual." A casual employee is one who was called to work on a certain job for an indeterminate, but usually short, period of time. After a casual works for a certain period of time he is eligible to go on the job "regular": which entitles him to be put on the board. Naturally, if a layoff occurs within a job category, the employees on the bottom of the board are the first to be released. Also, the employees on the top of the board enjoy overtime and transfer options and preference in bidding on the various jobs in that category.

The United States alleges that TIME discriminates against individuals because of their race in various ways. The Government claims that TIME doesn't hire minorities for any job in a

proportionate ratio to whites; that if a black or member of another minority group is hired, he is hired for the less beneficial jobs, and that if they are hired, these minorities are discriminated against in promotions and transfers to more advantageous positions.

In support of their claim, the Government has introduced statistics and depositions as well as witness testimony at the trial.

The statistics introduced are of two types. One is a comparison of the number of a minority residing in an area with the number of that minority who actually are employed by TIME. The other is a comparison of the number of minorities at each particular job at each terminal with the number of whites at the particular job at each terminal. Both statistical tables are set out *in toto* in Appendix A of this opinion, and as a finding of fact by this Court.

The statistics are a convincing commentary regarding the claim of TIME's discriminatory practices. They show that TIME has not in the past hired minorities in proportion to the minorities available within each terminal area. Further, statistics show that minorities have simply not been allowed to engage in the more choice jobs such as line driver.

These statistics alone are sufficient to show a prima facie violation of Title VII. Statistics are relevant and carry great weight in determining whether there has been a plan and practice of discrimination. *Bing v. Roadway Express Inc.*, 444 F.2d 687 (5th Cir. 1971); *Witherspoon v. Mercury Freight Lines, Inc.*, 547 F.2d 496 (5th Cir. 1972).

The testimony from the witness chair and the depositions clearly indicate that TIME and its predecessors engaged in the following practices:

(a) Numerous qualified black and Spanish-surnamed American applicants who sought line driving jobs at the company over

the years either had their requests ignored, were given false or misleading information about requirements, opportunities, and application procedures, or were not considered and hired on the same basis that whites were considered and hired.

(b) Numerous qualified black and Spanish surnamed American employees who have sought transfer to line driving jobs at the company have either been denied the opportunity to do so, or have not been permitted to transfer on the same basis as whites.

(c) At its Nashville terminal, the company has trained whites, but not blacks, to be mechanics, partsmen and shop supervisors.

All of the evidence is ample to show by a preponderance of the evidence that T.I.M.E. D.C. and its predecessor companies were engaged in a plan and practice of discrimination in violation of Title VII of the Civil Rights Act of 1964. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Bing v. Roadway Express, Inc.*, 444 F.2d 687 (5th Cir. 1971); *Witherspoon v. Mercury Freight Lines Inc.*, 457 F.2d 496 (5th Cir. 1972); *United States v. Hayes Int'l Corp.*, 456 F.2d 112 (5th Cir. 1972).

Defendant Unions asserts that even though TIME might be guilty of discrimination that the Unions themselves have done no act which could be construed as discriminatory. The contracts between the Unions and TIME, while being neutral on their face, do, however, operate to impede the free transfer of minority groups into and within the company. "Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices," *Griggs v. Duke Power Co.*, 401 U.S. 424, 429-30 (1971). It is not the intent of this Court to order the Union to completely revise their seniority system, however it is the ruling of this Court that neither TIME nor the Unions can set up the seniority system or the collective bargaining agreements to impede the natural infiltration of minority groups into and within the more ad-

vantageous jobs through TIME's employee hierarchy and the order of the Court, hereinafter described, will enjoin the Unions from interfering with relief here granted as well as the relief ordered by this Court's decree of May 12, 1972.

Since it has been established that the defendants here are in general violation of Title VII, and TIME has engaged in a plan and practice of discrimination, the next issue is whether the individuals listed have been the victims of this discrimination.

Plaintiff's list of individuals for whom relief is sought is taken from Plaintiff's Exhibit 204, which is a list of all persons hired by TIME or its predecessor companies with a notation as to their race. The plaintiff then listed those who were members of a minority to compose Plaintiff's List of Individuals for Whom Relief is Sought. The plaintiff claims that since these people were hired during a period in which TIME was practicing a plan and pattern of discrimination, that they are members of a class affected by TIME's discriminatory practices. The Court accepts this view to the extent that all are members of an affected class. However, this Court does not hold that all members were injured individually by being within the class, or that those who were injured were all affected to the same degree. This Court, in fact, does hold that some were not injured by being a member of the class, and that those who were injured were injured in varying degrees. There are no degrees of discrimination—discrimination is discrimination, and if made on the basis of race is deplorable whatever the degree; however there *are* degrees of injury due to that discrimination—and this is important in determining the equitable relief this Court should afford these individuals.

It should be noted that with two exceptions, all individuals on the list have been awarded monetary damages as provided in the Consent Decree in Partial Resolution of Suit. It should also be noted that of the hundreds listed, this Court has specific evidence on only 41 listed individuals.

Further, the evidence in this case has been introduced to show the plan and practice of discrimination by the defendant employer aided by the defendant labor unions. The Court has no evidence showing acts of discrimination by white employees. This fact is noted because the plaintiff has suggested as one form of relief that the alleged individual discriminatees be ordered to be placed on the "board," at a better classified or higher paying classification of job with the employer; and that his date of seniority be the date that that individual first entered into the employment of the defendant company or its predecessors. This suggestion has the advantage of restoring, as nearly as possible, an individual to the position that he would have enjoyed had there never been discrimination. But it has the overriding disadvantage of placing this person in a more senior status than white employees who have been placed in that category in the meantime and this record contains no evidence of discrimination by the white employees who would be severely affected by the Government's proposal. Of course it could be argued that had the discrimination not occurred the white employee would have enjoyed the junior status; but this Court cannot overlook the fact that these white employees are not responsible for the discrimination, although they may be beneficiaries thereof, and to enforce such a harsh remedy would unduly and unnecessarily disrupt whites who have grown accustomed to and been given and earned their senior status. It is unfortunate that a remedy does not exist which would fully compensate those who have suffered discrimination. Facing such a situation, this Court must balance the equities and determine a solution that will fulfill the meaning and intent of the Act.

The Court finds that 30 members of the class have suffered severe injury because of the practice and plan of discrimination by TIME. These individuals produced the most convincing evidence of discrimination and harm resulting therefrom. A list of these individuals, a brief summary of the evidence they presented, and the relief granted each is found in Appendix B,

which is made a part of this opinion for all purposes. The highest seniority date granted any individual listed in Appendix B is July 2, 1964, the effective date of 42 U.S.C. § 2000e. Of course, if one on the list has an employment date later than July 2, 1964, then the later date will be his seniority date.

It is therefore the Order of this Court that in complying with the provisions of 13(a) of the decree of this Court heretofore entered, that the company will first place those listed on Appendix B into the position sought and that when a vacancy occurs they will be given the place in the new category and that their seniority date for all purposes including bidding, layoff, and seniority purposes will be the date shown in column 3 of Appendix B.

These persons will be placed in the various positions that are shown in column three on Appendix B and at the terminal listed in column 1 when such a vacancy in such position exists at such terminal.

There are other individuals on plaintiff's list who fall within a grey area. The evidence regarding these individuals is not sufficient to show clear and convincing specific instances of discrimination or harm resulting therefrom. The evidence does show, however, that these individuals were very possibly the objects of discrimination and that they were likely harmed by such discrimination. Because there is no specific evidence, this Court, having broad equitable power with which to fashion a remedy, holds that these individuals are entitled to openings in the jobs listed with a seniority date as of the date of the filing of this suit, the 14th day of January, 1971. A list of these individuals with a brief summary of their complaint and the relief afforded each is set out in Appendix C, which is made a part of this opinion for all purposes. It is therefore the Order of this Court that in complying with the provisions of 13(a) of the decree of this Court heretofore entered, that the company

will place these employees after those listed in Appendix B into the positions sought and that when a vacancy occurs at the terminal and in the job position shown on Appendix C, they will be given the place in the new category and that their seniority date for all purposes including bidding, layoff, and seniority purposes will be the date shown on Appendix C.

Regarding a third group, listed on Appendix D, the evidence fails to show that there was any injury or harm to them as a result of TIME's discriminatory practices. The Court is convinced that even though these people had some dealings with TIME during the period of discrimination, that they were clearly not injured by such discrimination. It is therefore the ORDER of the Court that any equitable relief claimed by these individuals be DENIED. These people are listed in Appendix D, which is made a part of this opinion for all purposes.

The remainder of the individuals on plaintiff's list (filed with the Court on June 19, 1972) have either presented no evidence of discrimination against themselves and resulting harm or are no longer in the employ of TIME. As mentioned above, all are members of a class of discriminatees; however, this Court has no evidence to show that these individuals were either harmed or not harmed individually by the discrimination to the class as a whole. It would be unjust to deny completely any relief to these individuals; however, it would also be unjust to grant relief to all when the Court has no evidence of harm individually. In balancing the equities, it is the ORDER of this Court that these individuals be entitled to openings under paragraph 13(a) of the Consent Decree before those from the general public and after those listed in Appendix B and C, and that their seniority date be the date hired under paragraph 13(a).

In implementing the relief to be ordered defendant TIME will, with the aid of the defendant Unions, mail notice by Certified Mail to each individual named on the plaintiff's list filed

June 19, 1972 and entitled "INDIVIDUALS FOR WHOM PLAINTIFF SEEKS RELIEF" except that no such notice may be mailed to those individuals listed on Appendix D. Such notification will be by Certified Mail, Return Receipt Requested, and will be deposited in the mails within sixty (60) days from the date that the order of the Court becomes final, and shall be mailed to each individual's last known address. If delivery cannot be effected by such means, no further requirement of notice shall be required of the defendants to such individuals, provided that the notice was mailed to the last known address known to any of the defendants herein. Each individual shall be notified of the relief ordered to be given to each individual, and as shown on the various appendices to this opinion, and shall further advise that the individual must accept in writing the relief offered within sixty (60) days after such notice has been mailed. Failure to accept the relief ordered in writing by the individual will relieve defendants of any further obligation to such individual under the terms of the decree to be entered.

The order of this Court will further provide that in no event will any individual be entitled to receive any of the relief provided for except and unless that individual fully meets all of the requirements of the new job category to which he is to be assigned. Further, it will be provided that each individual will retain his present date of seniority for all company-wide benefits (such as retirement and fringe benefits), although such individual will have a different date of seniority on the new "board" to which he is assigned.

The defendant TIME will be required to furnish semi-annual reports to this Court and to the United States Attorney General showing compliance and reporting and other pertinent statistical information with respect to the individuals affected by this order, and in addition to those reports required in the previous Consent Decree heretofore entered.

The attorneys in this cause are directed to confer and to submit to the Court an appropriate form of order in accordance with the requirements of this Memorandum Opinion. It is recognized that in effecting the decree herein ordered to be entered that certain procedures will be necessary in order to prevent possible resulting inequities and injustices, and it is for that reason that the Court feels that the attorneys can appropriately draft the final order in this case as herein outlined.

This Memorandum Opinion shall constitute the Court's Findings of Fact and Conclusions of Law.

The Clerk will furnish a copy hereof to each attorney.

ENTERED this 19th day of October, 1972.

/s/ HALBERT O. WOODWARD
United States District Judge

APPENDIX A

Percent of "White", "Negro" and "Other" Population in the Standard Metropolitan Statistical Area and the City at T.I.M.E. D.C.'s Terminal Locations, and the "White", "Negro" and "Other" Work Force at T.I.M.E. D.C.'s Terminals

Terminal City	SMSA White	SMSA Negro	SMSA Other	City White	City Negro	City Other	T.I.M.E. D.C. White	T.I.M.E. D.C. Negro	T.I.M.E. D.C. Other
Albany	96.31	3.28	.41	87.00	12.31	.69	96.97	0	3.03
Atlanta	77.41	22.35	.24	48.40	51.31	.29	85.63	13.17	1.20
Baltimore	75.78	23.67	.55	52.98	46.39	.63	87.50	10.00	2.50
Boston	94.52	4.61	.87	81.85	16.33	1.82	98.28	0	1.72
Buffalo	91.22	8.06	.72	78.74	20.38	.88	100.00	0	0
Chattanooga	83.48	16.37	.17	63.72	36.06	.22	92.96	7.04	0
Chicago	81.28	17.64	1.08	65.57	31.75	1.68	93.84	3.32	2.84
Cincinnati	88.73	11.00	.27	71.91	27.64	.45	93.48	6.52	0
Cleveland	83.41	16.11	.48	61.01	38.33	.66	97.14	2.86	0
Dallas	83.23	15.98	.79	74.15	24.91	.94	85.32	13.76	.92
Decatur	—	—	—	86.90	13.00	.10	100.00	0	0
Denver	94.55	4.08	1.37	89.02	9.13	1.85	90.87	5.39	3.74
Detroit	81.42	18.03	.55	55.50	43.69	.81	98.11	1.89	0
El Paso	95.82	3.08	1.10	96.38	2.58	1.04	39.39	0	60.61
Evansville	94.02	5.82	.16	92.52	7.28	.20	97.83	2.17	0
Fountain	—	—	—	—	—	—	91.67	0	8.33
Hobbs	—	—	—	90.64	7.88	1.48	100.00	0	0
Kansas City	87.40	12.05	.55	77.20	22.09	.71	96.12	.97	2.91
Knoxville	92.57	7.17	.26	86.87	12.79	.32	96.36	3.64	0
Little Rock	80.77	18.98	.25	74.48	25.28	.24	94.12	5.88	0
Los Angeles (1)	85.42	10.84	3.74	77.19	17.88	4.93	77.89	9.88	12.23
Los Angeles (2)	85.42	10.84	3.74	77.19	17.88	4.93	80.08	4.30	15.62
Louisville	87.54	12.25	.21	75.94	23.80	.26	100.00	0	0
Lubbock	91.72	7.60	.68	91.83	7.50	.67	95.77	2.82	1.41
General Office	91.72	7.60	.68	91.83	7.50	.67	95.16	2.42	2.42
Memphis	62.16	37.52	.32	60.82	38.89	.29	87.31	12.69	0
Milwaukee	91.76	7.59	.65	84.42	14.65	.93	100.00	0	0
Montreal	—	—	—	—	—	—	100.00	0	0
Nashville	81.91	17.82	.27	80.08	19.62	.30	92.78	7.22	0
New York City (1)	81.96	16.33	1.71	76.56	21.18	2.26	97.67	.78	1.55
New York City (2)	81.96	16.33	1.71	76.56	21.18	2.26	95.95	2.70	1.35
Oklahoma City	89.10	8.50	2.40	83.94	13.69	2.37	94.50	3.30	2.20
Paris	—	—	—	—	—	—	97.50	2.50	0
Philadelphia	81.88	17.52	.60	65.62	33.55	.83	97.30	2.70	0
Phoenix	94.51	3.40	2.09	93.28	4.80	1.92	89.56	3.48	6.96
Portland	96.21	2.31	1.48	92.16	5.64	2.20	97.78	.89	1.33
Ripley	—	—	—	—	—	—	100.00	0	0

Terminal City	SMSA White	SMSA Negro	SMSA Other	City White	City Negro	City Other	T.I.M.E. D.C. White	T.I.M.E. D.C. Negro	T.I.M.E. D.C. Other
Rochester	92.96	6.54	.50	82.41	16.76	.83	100.00	0	0
Sacramento	90.96	4.74	4.30	81.50	10.71	7.79	89.47	0	10.53
Salisaw	—	—	—	—	—	—	100.00	0	0
San Antonio	91.98	6.93	1.09	91.37	7.65	.98	35.30	5.88	58.82
San Francisco	82.80	10.62	6.58	71.43	13.42	15.15	81.52	4.74	13.74
Seattle	94.03	2.93	3.04	87.39	7.13	5.48	96.36	1.04	2.60
Springfield	98.11	1.58	.31	97.67	1.98	.35	100.00	0	0
Stockton	88.08	5.44	6.48	79.52	10.98	9.50	100.00	0	0
Syracuse	95.61	3.68	.71	88.04	10.84	1.12	100.00	0	0
St. Louis	83.59	16.03	.38	58.66	40.85	.49	97.87	2.13	0
Tacoma	93.04	4.50	2.46	90.76	6.75	2.49	100.00	0	0
Toledo	91.35	8.25	.40	85.73	13.79	.48	100.00	0	0
Toronto	—	—	—	—	—	—	100.00	0	0
Tucson	93.63	2.94	3.43	94.82	3.49	1.69	80.00	10.00	10.00
Tulsa	88.28	8.25	3.47	86.55	10.64	2.81	93.34	3.33	3.33
Vancouver	—	—	—	—	—	—	100.00	0	0
Vinita	—	—	—	—	—	—	81.82	0	18.18
Washington, D.C.	74.26	24.61	1.13	27.66	71.08	1.26	100.00	0	0
Winchester	—	—	—	90.94	8.93	.13	96.70	.94	2.36
Yreka	—	—	—	—	—	—	100.00	0	0
York	97.41	2.37	.22	86.53	12.96	.51	100.00	0	0

SMSA (Standard Metropolitan Statistical Area) percentages are based on the 1970 U.S. Census of Population Reports. The terminal cities with dashes in the SMSA columns have no metropolitan area figures available from the Census Bureau.
City percentages are based on the 1970 U.S. Census of Population Reports of urban places with a population of more than 10,000. Population figures for cities with populations of under 10,000 are not available from the Census Bureau at this time and therefore dashes are indicates in these columns.

Population figures for Canadian cities are not included on the chart.

T.I.M.E. D.C. employment figures are based on the total terminal employment. The percentages are computed from the March 31, 1971 printout "Personnel List," Pl. Ex. 204, furnished plaintiff by T.I.M.E. D.C., Inc., Lubbock, Texas.

Comparison of White and Minority Group Members Within Individual Job Classifications at T.I.M.E. Terminals in Major Metropolitan Areas
Hayward, California Terminal (San Francisco)

Job Category	Total	White	Negro	SSA	Am. Indian Am.	Oriental
Mechanic	6	3		2	1	
Partsman	1	1				
Serviceman	6	5	1			
City H.D. Driver	18	14		3		1
City PUD Driver	45	33	3	9		
Line Driver	31	31				
Dockman	44	31	5	8		
Hostler	10	8		1	1	

Denver, Colorado Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	51	46	2	2	1	
Partsman	6	5	1			
Serviceman	27	7	19	1		
City Heavy Duty Driver	21	19		2		
City PUD Driver	33	24	3	5	1	
Line Driver	313	311			1	1
Dockman	65	53	5	7		
Hostler	17	15		2		
Janitor	5	2	2	1		

Vernon and Montebello, California Terminals (Los Angeles) (LAX)

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	40	29	4	6	1	
Partsman	6	5	1			
Serviceman	31	16	11	4		
City Heavy Duty Driver	45	22	11	12		
City PUD Driver	74	53	7	12	2	
Line Driver	319	315		2	2	
Dockman	119	51	35	30	2	1
Hostler	12	8	4			

Vernon and Montebello, California Terminals (Los Angeles) (LOS)

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	9	8		1		
Partsman	1	1				
Serviceman	7	2		5		
City Heavy Duty Driver	30	21	3	5		1
City PUD Driver	48	36	3	9		
Line Driver	55	55				
Dockman	47	30	5	10	1	1
Hostler	2			2		

Nashville, Tennessee Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	30	28	2			
Partsman	3	3				
Serviceman	25	9	16			
City PUD Driver	31	31				
Line Drivers	74	74				
Dockman	70	70				
Hostler	6	6				

Atlanta, Georgia Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	9	9				
City PUD Driver	31	20	11			
Line Driver	57	57				
Dockman	31	23	8			
Hostler	6	4	2			

Chicago, Illinois Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	26	25	1			
Partsman	1	1				
City Heavy Duty Driver	83	78	4		1	
Line Driver	97	97				
Dockman	83	75		7	1	
Hostler	12	12				

Oklahoma City, Oklahoma Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	43	40	1		2	
Partsman	5	4		1		
Serviceman	23	18	3	2		
City PUD Driver	20	20				
Line Driver	103	101	2			
Dockman	38	35	2		1	
Hostler	2	2				

Dallas (Irving), Texas Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
City PUD Driver	29	22	7			
Line Driver	20	20				
Dock Foreman	5	5				
Dockman	41	32	8	1		

San Antonio, Texas Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
City PUD Driver	13	3	1	9		
Dockman	1			1		

Memphis, Tennessee Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	17	16	1			
City PUD Driver	35	24	11			
Line Driver	104	101	3			
Dockman	112	89	23			
Hostler	8	6	2			

APPENDIX B

The following individuals are those which the evidence clearly shows were the objects of discrimination in the hiring and promotional practices of defendant T.I.M.E. D.C. Included here is a brief description of specific acts of discrimination and the equitable relief given each by this Court.

Name (Terminal and Race)	Complaint	Relief
1) Edgar Cornelius Rudison (Vernon, Negro)	1) Has been a city driver with T.I.M.E. for 22 years. Asked for a line job 13 years ago and has always been told that T.I.M.E. D.C. had plenty of line drivers.	1) Plaintiff* to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
2) Roy F. Patton (Vernon, Negro)	2) Has been a city driver with T.I.M.E. D.C. for 14 years. Has asked for a line job two times but was refused or told that he would have to go on the extra board.	2) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
3) Jose de Ramirez Almarez (Montebello, Mexican American)	3) Applied for line job in 1956 but was refused because of his race. Has been a city and heavy duty driver since 1957.	3) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
4) John Passi (Montebello, Polynesian)	4) Started with T.I.M.E. as a heavy duty driver in 1965. Asked about line job but was told he didn't have enough experience even though he had driven in Korea.	4) Plaintiff to be offered the opportunity to fill line driver job on basis of September, 1965 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
5) James A. Floyd (Vernon, Negro)	5) Had 21 years driving experience before going with T.I.M.E. D.C. in 1961. When he asked about a line job in 1963 the personnel manager simply walked away.	5) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.

Name (Terminal and Race)	Complaint	Relief
6) Marvin R. Vestal (Vernon, Negro)	6) Has been employed by T.I.M.E. D.C. on a "casual" basis. Has applied with T.I.M.E. for line job on three occasions and was refused for various reasons.	6) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
7) Veris Sims (Denver, Negro)	7) Started with T.I.M.E. in 1955 as a serviceman. Asked about a line job in 1964 and was told that he couldn't be bonded and that no whites would drive with him.	7) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
8) Filberto Trujillo (Denver, Mexican American)	8) Applied with T.I.M.E. for line job when he started in 1965 and again in 1967. Refused because of his race.	8) Plaintiff to be offered the opportunity to fill line driver job on basis of July 15, 1965 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
9) James H. Walker (Memphis, Negro)	9) Started in 1948 as city driver with T.I.M.E. Applied in 1957 for line job but was refused because of his race.	9) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
10) J. L. McNeal (Memphis, Negro)	10) Started with T.I.M.E. in 1948 as a city driver. Asked for line job in 1956 but was told that no line drivers were being hired.	10) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
11) Arthur L. Thornton (Memphis, Negro)	11) Started with T.I.M.E. in 1948 as a city driver. Applied for line job from times between 1956 and 1969 and was refused because of his race. Was eventually hired as line driver in 1969.	11) Defendant is to allow Thornton to use July 2, 1964 as his seniority date in the job of line driver for all purposes, including bidding and layoff.
12) Lee Francis Jones 13) Thomas Richard Johnson 14) Henry L. Davis 15) Raymond L. Rucker 16) Levi Grant 17) James A. Keeling (Nashville, Negroes)	All are servicemen in Nashville who started prior to 1964 and who have been denied advancement due to their race.	[Defendant to provide [proper training to qualify [these individuals to work as [dockman, partsman, or me-[chanic; and if qualified that [they be given seniority date [of July 2, 1964 for all pur-[poses, including bidding and [layoff.

Name (Terminal and Race)	Complaint	Relief
18) Joe Amos (Atlanta, Negro)	18) Applied in 1957 and 1966 for extra line runs. In 1966 all extra line runs were eliminated to avoid giving the runs to Negroes.	18) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
19) Theodus Perry (Atlanta, Negro)	19) Started as heavy duty driver with T.I.M.E. in 1964, applied for extra line runs in 1966 but was refused.	19) Plaintiff to be offered the opportunity to fill line driver job on basis of July 1, 1966 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
20) John J. Calhoun (Atlanta, Negro)	20) Started in 1956 as a heavy duty driver. Asked for extra line runs in 1966; however company cancelled extra line runs instead of hiring Negroes.	20) Plaintiff to be offered the opportunity to fill line driver job on basis of July 1, 1966 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
21) Thomas M. White (Los Angeles, Negro)	21) Started as city driver in 1946. Applied for line job in 1956 and numerous times thereafter. No reason was given for his refusal.	21) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
22) Grady Amos (Atlanta, Negro)	22) Started with T.I.M.E. in 1956 as a city driver. Asked for extra line runs in 1957 and regular line job in 1965. Was told he would get poor accommodations.	22) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
23) David E. O'Neal (Vernon, Negro)	23) Started with T.I.M.E. in 1961. Has a college degree, however failed to put this on his application so he could get a laboring job. Applied for salesman job in 1965 but was refused because of his race.	23) Defendant will provide normal training and probationary period for salesman job; and if qualified will offer first salesman position available with January 1, 1966 as seniority date in that job for all purposes, including bidding and layoff.
24) Otis A. Zeno (Hayward, Negro)	24) Started with T.I.M.E. in 1966 as a dockman. Became city driver in 1967; however has been assigned defective and unsafe equipment and is the only driver who does not have equipment assigned to him permanently.	24) Defendant shall assign this plaintiff a truck-tractor of a condition equivalent to those assigned to other city drivers who have assigned routes.

Name (Terminal and Race)	Complaint	Relief
25) Robert T. Jones (Memphis, Negro)	25) Became a regular city driver with T.I.M.E. in 1953. Applied for line job in August of 1970. Was later offered line job but did not take it.	25) Plaintiff to be offered the opportunity to fill line driver job on basis of August, 1970 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
26) Clayborn Moman (Memphis, Negro)	26) Started in 1964 as a hostler and applied for a line job a few months thereafter. Now is a city driver. Was offered a line job in 1969 but refused it.	26) Plaintiff to be offered the opportunity to fill line driver job on basis of January 1, 1966 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
27) Robert McCrimmon (Dallas, Negro)	27) Employed by T.I.M.E. in 1969. Asked for a line job in 1970 but was told it was a company policy not to transfer from city to line.	27) Plaintiff to be offered the opportunity to fill line driver job on basis of July 1, 1970 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
28) Richard Stinson (Oakland, Negro)	28) Applied for line job in 1969 but was told that T.I.M.E. didn't have enough equipment. Tried again in 1971. Has had extensive driving experience with other companies.	28) Plaintiff to be offered the opportunity to fill line driver job on basis of July 1, 1969 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
29) Iris G. Darden Hix (Los Angeles, Negro)	29) Worked for T.I.M.E. as billing clerk for 3 weeks in 1966. Was fired because her work was too slow, however the evidence clearly shows that she was the object of blatant discrimination.	29) Plaintiff to be offered the opportunity to fill billing clerk job on basis of August 1, 1966 seniority date, and if found qualified, to take her seniority to that job for all purposes, including bidding and layoff.
30) Virgil A. Hardin (Montebello, Negro)	30) Started with T.I.M.E. in October of 1968. Applied for local job because he was told not to apply for a line job.	30) Plaintiff to be offered the opportunity to fill line driver job on basis of October 1, 1968 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.

* Plaintiff used throughout this Appendix refers to the individual for whom the Government is seeking relief.

APPENDIX C

The evidence in respect to the following individuals is not sufficient to show clear and convincing specific instances of discrimination. The evidence does show, however, that these individuals were very possibly the objects of discrimination or that discrimination in their case was likely. Because there is no specific evidence, this Court, having broad equitable powers with which to fashion a remedy, holds that these individuals are entitled to openings in the jobs listed with a seniority date as of the date of the filing of this suit the 14th of January, 1971.

Name (Terminal and Race)	Complaint	Job
1) Carlton King (Hayward, Negro)	1) Started in 1962 with T.I.M.E. as a heavy duty driver. There were four incidents which his foreman "threatened" to fire him, however he was never fired. Has never asked for a line job.	1) Line driver
2) Foster Barnes (San Antonio, Negro)	2) Has only worked for T.I.M.E. as "casual" and on two short occasions as a regular. His complaint is that he has never been hired by T.I.M.E. as a regular or worked regular status long enough to avoid being laid off; however he has not been hired as a regular by any other San Antonio trucking firm.	2) City driver
3) George W. Sullivan (Hayward, Negro)	3) Started in 1968 with T.I.M.E. as a dock worker. Became city driver in 1970. Has not asked for line job.	3) Line job
4) Ophenus Barber (Dallas, Negro)	4) First hired by T.I.M.E. as a city driver in 1967. Has never asked for a line job.	4) Line driver

APPENDIX D

The Court finds that the evidence regarding the following individuals either shows no discrimination or that there was any harm as a result of T.I.M.E.'s hiring practice.

1) Earmitt Ceophalus Jones (Denver, Negro).

2) Jerome Pastwick (Denver, white).

3) Fontaine E. Yount (Memphis, white).

4) W. G. Gately (Memphis, white).

5) James Wallace, Jr. (Nashville, Negro).

6) Harrell Holley (Dallas, Negro).

7) Michael Arriga (Dallas, Mexican-American).

OPINION
Of the District Court for the Northern District of Texas
December 6, 1972; 6 F.E.P. Cases 703

In the United States District Court
For the Northern District of Texas
Lubbock Division

United States of America, Plaintiff, v. T.I.M.E.-DC, Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO, Defendants.	Civil Action No. 5-868.
United States of America, Plaintiff, v. T.I.M.E. Freight, Inc. (now T.I.M.E.-DC, Inc.) and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Defendants.	Civil Action No. 5-897.

Supplemental Opinion

The Court having received inquiries from the parties regarding the prior Opinion of October 19, 1972, and upon further

reconsideration of such Opinion it is the Order of the Court that the following be supplemental thereto:

I

That Appendix D be removed from the October 19th Opinion and that the names heretofore listed in such appendix be treated and included as those individuals mentioned on page 11, *i.e.*, the remainder group entitled to openings under Paragraph 13(a) of the Consent Decree before those from the general public and after those listed in Appendices B and C, and their seniority date be the date hired under Paragraph 13(a).

II

It is the Order of the Court that the 16 individuals listed in "Attachment A" of the government's November 2, 1972, letter be treated and included as those individuals mentioned on page 11 of the October 19, 1972 Opinion, *i.e.*, those entitled to openings under Paragraph 13(a) of the Consent Decree before those from the general public and after those listed in Appendices B and C, and their seniority date be the date hired under Paragraph 13(a). Such "Attachment A" above referred to is attached to this Supplemental Opinion as "Attachment A."

III

Since Appendix D has been removed from the October 19, 1972 Opinion, it is the Order of the Court that those listed in "Attachment B" of the government's letters of November 2, 1972, as well as Tereso J. Gonzales, be treated and included as those individuals mentioned on page 11 of the October 19, 1972 Opinion, *i.e.*, those entitled to openings under Paragraph 13(a) of the Consent Decree before those from the general public and after those listed in Appendices B and C, and their seniority date be the date hired under Paragraph 13(a). Such "Attachment B" above referred to is attached to this Supplemental Opinion as "Attachment B."

IV

If an employee of T.I.M.E. is laid off such laid off employee shall have a preference to fill such laid off position when it again becomes open without competition from the individuals granted relief in this case. However, if such layoff continues for three consecutive years the position will be deemed as "vacant" with the right of all concerned to compete for such position, using their respective seniority dates, including those ordered by the decrees of this Court.

V

Subject to paragraph IV above and where a vacancy occurs, the individuals given relief hereunder shall have preference over employees at other terminals in filling such vacancy at the terminal shown by their respective names in Appendices B and C of the order of this Court, even though such individual's date of seniority is junior to that of another employee located at another terminal. This preference over employees at other terminals, even though such other employees may have seniority, is to be given regardless of the provisions of any agreements to the contrary such as the Southern Conference area over-the-road Supplemental Agreement. If an individual afforded relief hereunder desires to bid on a vacancy at a terminal other than that shown by his name in such appendices, such individual shall be permitted to bid on an equal basis with others, using as a seniority the date granted for seniority purposes by the Court in this case.

VI

The effective date of Title VII of the Civil Rights Act of 1964 is July 2, 1965. This date should be substituted for July 2, 1964 in the October 19th Opinion as the seniority date for certain individuals.

VII

The reporting requirements mentioned at the bottom of page 12 of the October 19th Opinion will terminate three (3) years subsequent to final entry of judgment in this cause; provided, however, that such time may be extended upon good cause shown.

VIII

It is ordered that TIME shall first fill the vacancies in accordance with Paragraph 13(a) of the Consent Decree with those individuals listed in Appendices B and C as well as the others referred to on page 11 of the October 19th, 1972 Opinion and those included in such category by the above provisions of this Supplemental Opinion. After all such individuals named in these appendices and those others included in the category defined on page 11 of the original Opinion have been given a full and fair opportunity to fill such vacancies in accordance with the orders of this Court, then Paragraph 13(a) will be deemed to have been complied with and the provisions of Paragraph 13(b) of the Consent Decree will then become operative.

In the event an individual, other than those listed on Appendices B and C, given relief hereunder, wishes to compete and bid on a vacancy, such individual is given preference over those other applicants not then in the employ of TIME and shall also be given preference over other TIME employees who have no seniority in the category where the vacancy occurs. Provided,

however, that in all cases where a vacancy is to be filled, that the qualification of an applicant shall be governed by the terms of Paragraphs 5-12, inclusive, of the Consent Decree.

IX

The attorneys shall forthwith confer and submit a proposed form of final and formal judgment and decree to be entered by the Court. In preparing such formal decree the Court suggests to the attorneys that it may be desirable that each individual be listed and named including those referred to in the category on the bottom of page 11 of the October 19th, 1972 Opinion.

X

As a further clarification of the second full paragraph on page 11 of the October 19th, 1972 Decree, it is here specified that the term, on page 11 as well as where used in this Opinion, "be the date hired under Paragraph 13(a)" shall mean that date that such employee enters into the employment in the category which he applies for under the rights given him by this Court, even though he might have an earlier seniority date in his then-previous category of his employment by TIME.

The Clerk will furnish a copy hereof to each attorney.

ENTERED this 6th day of December, 1972.

/s/ HALBERT O. WOODWARD
United States District Judge

ATTACHMENT B

Name
R. D. Campbell
B. B. Hodges
O. Holcomb
A. C. Taylor
J. L. Benefield
J. L. Boudreaux
W. G. Bryan
H. S. Holliday
T. Luttrell
O. McElroy
L. E. Nichols
J. W. O'Neill
O. L. Shaw
P. C. Thomas
J. Williamson
B. Wilbanks
H. Kelley
G. Jacques

DECREE
In Partial Resolution of Suit—Northern District of Texas, May 12, 1972; Unreported

In the United States District Court for the
Northern District of Texas
Lubbock Division

United States of America, Plaintiff, vs. T.I.M.E. D.C., Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO, Defendants,	Civil Action No. 5-868
United States of America, Plaintiff, vs. T.I.M.E. Freight, Inc. (now known as T.I.M.E. D.C., Inc.), and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Defendants.	Civil Action No. 5-897

Decree in Partial Resolution of Suit

The United States of America commenced Civil Action No. 5-868 in this Court on January 14, 1971. Civil Action No.

5-897, originally commenced by the United States in the Federal District Court for the Middle District of Tennessee, Nashville Division, on May 15, 1968, was consolidated with Civil Action No. 5-868 in this Court on April 30, 1971. The United States alleged that the defendants T.I.M.E. D.C., Inc. (hereinafter called T.I.M.E. D.C.), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America were engaged in a pattern and practice of discrimination in employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*. The International Association of Machinists and Aerospace Workers, AFL-CIO was joined as a defendant in Civil Action No. 5-868 on April 21, 1971. Trial on the merits in these actions began on May 3, 1972 and the parties have presented evidence to the Court.

This Court has jurisdiction of the parties and of the subject matter of this action. This Order, being issued with the consent of the defendant T.I.M.E. D.C., shall not constitute an adjudication or finding on the merits of the case and shall in no manner be construed as an admission by T.I.M.E. D.C. of any violation of said Title VII.

It is therefore Ordered, Adjudged and Decreed that:

Employee Recruitment

1. T.I.M.E. D.C. shall undertake an employee recruiting program aimed at the black and Spanish-surnamed American communities in each city where T.I.M.E. D.C. maintains a terminal or other facility at which it employs personnel. Within 45 days of the date of this Decree, T.I.M.E. D.C. shall contact organizations in the black and Spanish-surnamed American communities, such as the Urban League and the American G.I.

Forum, and shall also contact local job training organizations. T.I.M.E. D.C. shall inform each such organization that it desires to hire qualified black and Spanish-surnamed American employees and that it will contact the organization whenever job vacancies ocur. T.I.M.E. D.C. shall give each organization a statement setting forth the minimum qualifications for each job classification and a copy of the company's equal employment opportunity statement. Thereafter, whenever new employees are being hired for any job classification at a T.I.M.E. D.C. terminal, the terminal manager or his designee shall notify said black and Spanish-surnamed American organizations and job training organizations immediately upon determining that job vacancies exist, in order to give said organizations an opportunity to refer qualified applicants.

If such contacts fail to develop an adequate number of qualified black and Spanish-surnamed American applicants for each job classification at a particular terminal or other facility, T.I.M.E. D.C. shall undertake an advertising program in newspapers or on radio stations in that city directed to and having general circulation in the black and Spanish-surnamed American communities.

2. T.I.M.E. D.C. shall take applications from all blacks and Spanish-surnamed Americans who inquire about employment, regardless of whether job vacancies exist. T.I.M.E. D.C. shall keep such applications in a current file for at least four months. When job vacancies occur, T.I.M.E. D.C. shall notify each black and Spanish-surnamed American applicant on the current list for the job to be filled at least three days before it is filled. T.I.M.E. D.C. shall inform each such black and Spanish-surnamed American applicant that he may renew his application every four months in person or by letter.

3. Each T.I.M.E. D.C. terminal and facility shall maintain, during the period of this Decree, the records listed below. Such

records shall be made available to plaintiff or its designee for inspection and copying upon written request.

a. A list of minority community organizations and job training organizations contacted, showing the date of each contact, persons contacted, name and position of the T.I.M.E. D.C. employee making the contact and the nature of the contact.

b. All job applications. The company shall note on each application whether the applicant is white, black, Spanish-surnamed American, American Indian or Oriental.

c. Logs showing by name, race or national origin and date all new hires, job assignments, promotions within a job classification, transfers between job classifications, terminations within a probationary period on the job and dismissals.

d. Such other records as are set forth elsewhere in this Decree, *e.g.*, new hires, job assignments, etc.

4. T.I.M.E. D.C. shall, during the period of this Decree, submit quarterly reports to the Court and the plaintiff or its designee showing, by race or national origin for each job classification at each terminal or other facility, the number of persons employed at the beginning of the period, job applicants, new hires, promotions within job classifications, transfers between job classifications, terminations within a probationary period on the job and dismissals.

Qualifications for Employment

5. The qualifications for city driving and road driving positions shall be those set forth in the Department of Transportation's Motor Carrier Safety Regulations, Title 49, Part 391, Sec-

tions 391.11 and 391.15. No black or Spanish-surnamed American applicant for a road driving position who meets these qualifications shall be deemed insufficiently experienced for that position if he has the equivalent of two years experience driving equipment comparable to that to be operated on the job. In determining equivalence, T.I.M.E. D.C. shall consider such factors as military driving experience and graduation from a truck driving school.

6. Applicants for the position of dockman, mechanic helper, mechanic apprentice and serviceman shall not be required to have any prior experience in the position sought or in the trucking industry. Applicants for the position of diesel, auto or trailer mechanic must have some journeyman experience, or be a graduate of a recognized mechanic training school, unless the company desires to train a person for the job.

7. In evaluating the qualifications of applicants for salesman positions, the company shall give consideration to sales experience acquired in areas other than the trucking industry.

8. T.I.M.E. D.C. may continue to require applicants for all positions except office and clerical to pass the standard Department of Transportation physical examination.

9. Applicants for office and clerical positions may be required to pass objective, practical tests which measure the skills and aptitudes which they will need on the job sought. Practical tests are exemplified by typing, shorthand and office machine tests.

10. No applicant shall be disqualified for employment solely because he has an arrest record involving no convictions or does not have a high school diploma or the equivalent, unless the job reasonably requires a high school diploma.

11. Before T.I.M.E. D.C. imposes more stringent qualifications than those listed in paragraphs 5, 6, 7, 8, 9 and 10 above,

it shall give plaintiff written notice of the intended changes and the reasons therefore at least 45 days before such qualifications are imposed. T.I.M.E. D.C. may not give any general intelligence or aptitude test to minority employees or applicants which has not been validated in accordance with the provisions set forth in the Equal Employment Opportunity Commission's *Guidelines on Employee Selection Procedures*, 35 F.R. 12333, et seq., 29 C.F.R. §1607.1 to 1607.14.

12. T.I.M.E. D.C. may continue to give the Department of Transportation written safety test to all applicants; however, passing the test shall not be a qualification for employment unless the Department of Transportation revises its Motor Carrier Safety Regulations, Title 49, Part 391 to so provide.

New Hires

13. All job vacancies at T.I.M.E. D.C. terminals and other facilities at which it employs personnel shall be filled in the following sequence:

(a) By those persons who may be found by the Court, if any, to be individual or class discriminatees suffering the present effects of past discrimination because of race or national origin prohibited by Title VII of the Civil Rights Act of 1964.

(b) By any other persons. Subject to the availability of qualified black and Spanish-surnamed American applicants, T.I.M.E. D.C. shall hire or may transfer other persons in addition to those in paragraph (a) above in the ratio of at least one black or one Spanish-surnamed American for each white hired or transferred in vacancies in each job classification at each of its terminals and facilities until the number of blacks and Spanish-surnamed Americans in each job classification at each terminal and facility is equal to the percentage of blacks and Spanish-surnamed Americans in the population of the city (or Standard Metro-

politan Statistical Area, if the city in which the terminal or facility is located is in close proximity to a much larger city) where the terminal or facility is located. When T.I.M.E. D.C. reaches either the city or Standard Metropolitan Statistical Area percentage, whichever is applicable, for either blacks or Spanish-surnamed Americans, the company shall then hire one black or one Spanish-surnamed American, depending on which said minority percentage has not yet been attained, for each white hired, to the extent that qualified applicants from that said minority are available, until said minority percentage is equal to the percentage of that minority in the city or Standard Metropolitan Statistical Area, whichever is applicable. The percentages shall be based on the "U.S. Bureau of the Census General Population Characteristics, Final Report PC (1-B)" for the 1970 Census, as supplemented, unless T.I.M.E. D.C. shows that any percentages contained therein are not substantially reflective of the black or Spanish-surnamed American work force figures for a given city. The plaintiff shall provide T.I.M.E. D.C. with a copy of said report or reports as soon as they become available.

14. T.I.M.E. D.C. shall use its best efforts to hire casuals and summer employees in the same ratio in which it hires reguiar employees, but casuals and summer employees shall not be counted in computing the ratio set forth in paragraph 13 above.

Back Pay

15. T.I.M.E. D.C. shall furnish the sum of eighty-nine thousand, five hundred dollars ($89,500) in full settlement of its alleged obligation to provide monetary compensation to alleged individual and class discriminatees in these actions. Any alleged discriminatees accepting a designated portion of

said settlement shall sign a release stating that said designated portion is accepted in full settlement of all claims for monetary compensation against T.I.M.E. D.C. or a predecessor corporation, based on alleged discriminatory acts because of race or national origin occurring prior to the date such release is signed. The signing of such release by an alleged discriminatee shall not, however, constitute a waiver of any rights other than monetary compensation against T.I.M.E. D.C. or a predecessor corporation which may have accrued to the alleged discriminatee. Within 30 days from the date of the entry of this Decree, plaintiff shall file with the Court and provide to T.I.M.E. D.C. a list of each alleged individual and class discriminatee and the designated portion of said settlement which will be offered to each alleged discriminatee, provided that the maximum payment for each alleged discriminatee shall not exceed fifteen hundred dollars ($1,500). Said list shall become a part of this Decree as if fully incorporated herein. In the event an alleged discriminatee does not accept the portion designated for him, said portion shall be retained by T.I.M.E. D.C.

Costs

16. T.I.M.E. D.C. shall pay plaintiff's costs of the depositions taken by plaintiff in these actions prior to the date of this Decree, upon presentation of official receipts for these costs to T.I.M.E. D.C. by plaintiff, up to a maximum of five thousand dollars ($5,000).

Retention of Jurisdiction

17. The Court retains jurisdiction of these actions for such further relief or other orders as may be appropriate. At any time after three years subsequent to the date of entry of this

Decree, the defendant T.I.M.E. D.C. may move the Court, on due notice, for dissolution of this Decree.

Entered this 12th day of May, 1972.

/s/ HALBERT O. WOODWARD
United States District Judge

By Consent:

/s/ WILLIAM B. FENTON
Attorney for Plaintiff,
United States of America

/s/ ROBERT D. SCHULER
Attorney for Defendant,
T.I.M.E. D.C., Inc.

"FINAL ORDER"
Of the District Court for the Northern District of Texas
March 2, 1973; Unreported

In the United States District Court for the
Northern District of Texas
Lubbock Division

United States of America,
Plaintiff,
v.
T.I.M.E. D.C., Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO,
Defendants.
Civil Action No. 5-868

United States of America,
Plaintiff,
v.
T.I.M.E. Freight, Inc., (now known as T.I.M.E. D.C., Inc.), and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,
Defendants.
Civil Action No. 5-897

Final Order

These actions having come on for trial before the Court, and a Decree in Partial Resolution of Suit having been entered by

consent between plaintiff and defendant T.I.M.E. D.C. on May 12, 1972, which decree provided methods of employee recruitment, defined qualifications for employment, specified the sequence in which job vacancies should be filled, provided back pay to alleged individual and class discriminatees in these actions, required defendant T.I.M.E. D.C. to pay costs of the depositions taken by plaintiff up to a specified amount, and retained jurisdiction in this Court for such other relief as was shown to be appropriate; and the Court thereafter having considered the entire record and the briefs and arguments of counsel, and having determined the remaining issues in the case as recorded in the Court's Memorandum Opinions of October 19, 1972 and December 6, 1972, respectively, it is hereby Ordered, Adjudged and Decreed:

1. Defendants T.I.M.E. D.C., Inc. (hereinafter T.I.M.E.), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter the Unions), their officers, agents, employees, successors and all persons in active concert or participation with them or with any of them are permanently enjoined from engaging in any act or practice at any of T.I.M.E.'s facilities which has the purpose or the effect of discriminating against any individual because of his race or national origin.

A. **General Provisions**

2. The individuals given relief by this Order, and the relief each is entitled to, are set forth in Appendices A, B and C of this Order, which Appendices are hereby made a part hereof for all purposes. With respect to the individuals given relief by this Order, the following general provisions shall apply.

3. Defendant T.I.M.E. will, with the aid of the defendant Unions, mail notice by Certified Mail to each individual. Such

notification will be by Certified Mail, Return Receipt Requested, and will be deposited in the mails within sixty (60) days from the date of the entry of this Order, and shall be mailed to each individual's last known address. If delivery cannot be affected by such means, no further requirement of notice shall be required of the defendants to such individuals, provided that the notice was mailed to the last address known to any of the defendants herein. Each individual shall be notified of the relief to be given to him, as set forth elsewhere in this Order, and each individual shall further be advised that he must accept in writing the relief offered within sixty (60) days after the notice is mailed to him. This means that the acceptance must be postmarked within 60 days after the notice is mailed to him. Failure by the individual to accept in writing the relief ordered for him will relieve defendants of any further obligation to such individual under the terms of this Order.

4. In no event will any individual be entitled to receive any of the relief provided for in this Order except and unless that individual fully meets all of the requirements of the new job category. The requirements of the job categories shall be objective ones and shall follow those set out in paragraphs 5 through 12 of the Decree in Partial Resolution of Suit, entered in these actions on May 12, 1972. However, T.I.M.E. shall be required to provide reasonable training to qualify those servicemen at the Nashville terminal set forth in Appendix A for the jobs of dockman, partsman or mechanic.

5. All individuals who are given an opportunity to transfer to a line driving job or a city driving job pursuant to this Order shall be entitled to demonstrate their driving skill to qualify for such a job when the job becomes available. They shall be allowed a reasonable opportunity if they desire to familiarize themselves with company equipment prior to demonstrating their driving skills.

6. T.I.M.E. may continue to use its driving performance tests in determining qualifications. However, if any individual given relief who fails a driving test can demonstrate two years of driving experience on the type of equipment for which he is being tested, the individual shall be entitled to retake the test if he desires in the presence of a neutral person agreed on by the individual and T.I.M.E.

7. An individual who transfers to another job pursuant to this Order shall have a 30 day probationary period during which he shall have the right to return to his former job without loss of seniority if he does not wish to stay in his new job, or if he cannot reasonably meet objective standards for the new job. This shall not prevent T.I.M.E. from imposing normal discipline, including discharge for reasonable cause. Such a return will relieve the defendants of any further obligation to such individual under the terms of this Order.

8. When vacancies occur in jobs which the individuals are eligible to transfer or otherwise fill under this Order, T.I.M.E. shall contact those individuals who have given the company written notice of their intention to accept the relief given them by this Order, in the sequence in which these individuals are entitled to relief pursuant to this Order. If two or more individuals in the same class of discriminatees are eligible to qualify for the same vacancy, the individual with the earliest company seniority date will be offered the first opportunity to qualify for the vacancy. As between former applicants of T.I.M.E. in the same class of discriminatees eligible to qualify for the same vacancy, the applicant who formerly applied the earliest at the company will be offered the first opportunity to qualify for the vacancy. With respect to those individuals in Appendix C, present employees of T.I.M.E. shall have preference over non-employees in qualifying for a vacancy. If any individual does not accept an opportunity to transfer to or otherwise fill a vacancy

in a job offered him pursuant to this Order at the terminal where he is employed, or if not employed by the company at the terminal where he applied for a job, except for illness, he shall be deemed to have waived his right to that job under this Order. After indicating an interest in a particular job, if an individual who is an employee of T.I.M.E. quits or is finally terminated for cause before accepting an actual vacancy, he shall lose all rights under this Order. In addition, any individual employee of T.I.M.E. on Appendix A, B or C who is finally terminated for cause prior to notification of transfer opportunities set out herein shall also be deemed to lose all rights under this Order.

9(a). A "vacancy" as used in this Order, shall include any opening which is caused by the transfer or promotion to a position outside the bargaining unit, death, resignation or final discharge of an incumbent, or by an increase in operations or business where, ordinarily, additional employees would be put to work. A vacancy shall not exist where there are laid off employees on the seniority roster where the opening occurs. Such laid off employees shall have a preference to fill such laid off positions when these again become open without competition from the individuals granted relief in this case. However, if such layoff continues for three consecutive years the position will be deemed as "vacant" with the right of all concerned to compete for the position, using their respective seniority dates, including those provided for in this Order.

(b). A vacancy shall not exist where employees move to another terminal pursuant to a bona fide change of operations; provided that, in such instances, the rights of individuals given relief herein in the form of an opportunity to fill future vacancies in a particular job with specified seniority shall also transfer between those terminals involved in the change of operations, and such individuals shall compete for vacancies with other discriminatees, if any, at the new terminal, on the basis of the specified seniority which they receive herein.

10. Subject to paragraph 9 above and where a vacancy occurs, the individuals given relief by and named in Appendices A and B of this Order shall have preference over employees at other terminals in filling such vacancy at the terminal shown by their respective names in Appendices A and B of this Order, even though such individual's date of seniority is junior to that of another employee located at another terminal. This preference over employees at other terminals, even though such other employees may have seniority, is to be given regardless of any agreements to the contrary such as the Southern Conference Area Over-the-Road Supplemental Agreement.

11. A line driver domiciled at a terminal covered by the Southern Conference Area Over-the-Road Supplemental Agreement may, if he is laid off, continue to exercise his present right to "bump" (displace) a line driver junior to him at another terminal where there is no present opening at the other terminal. Such an individual shall also continue to exercise his present right of recall to his "home" terminal when such a position again becomes open, without competition from the individuals granted relief in this case, as set forth in Paragraph 9(a) above. However, when an opening in a line driver job subsequently occurs at the terminal where the bump took place, individuals given relief at that terminal by this Order will be entitled to compete for that opening on the basis of the seniority relief given them herein against any line driver who may have been laid off as a result of the bump.

12. Individuals at terminals covered by the Southern Conference Area Over-the-Road Supplemental Agreement afforded relief hereunder in the form of an opportunity to fill a vacancy in a line driver job shall be permitted to bid on vacancies in line driver jobs at other terminals of the company covered by the Agreement on an equal basis with others, using as a seniority date the date granted them for seniority purposes by this Order; provided, however, that individuals afforded relief hereunder at

the terminal where the vacancy occurs shall first be permitted to qualify for the vacancy. Defendant T.I.M.E. may require that such individuals inform the company in writing if they desire to be notified of and considered for vacancies in line driver jobs at such other terminals and if T.I.M.E. does implement this requirement, it shall inform such individuals of those terminals covered by the Southern Conference Agreement where line drivers are domiciled.

13. Individuals at the Montebello and Vernon, California (Los Angeles) terminals of the company afforded relief hereunder in the form of an opportunity to fill a vacancy in a line driver job shall be permitted to bid on vacancies in line driver jobs at the other of these two terminals on an equal basis with others, using as a seniority date the date granted them for seniority purposes by this Order; provided, however, that individuals afforded relief hereunder at the terminal where the vacancy occurs shall first be permitted to qualify for the vacancy.

14. Each individual who transfers to another job pursuant to this Order will retain for all company-wide fringe benefits the seniority date he presently uses for such purposes, even though such individual may have a different date of seniority on the new seniority roster to which he is assigned for purposes of job bidding and layoff protection.

15. Any of the individuals given relief in Appendix C hereto who have already moved to a job to which they are given an opportunity to move by this Order shall retain their present seniority date in that job.

B. **Individuals Given Relief**

In complying with the provisions of paragraph 13(a) of the Decree in Partial Resolution of Suit, entered in these actions on May 12, 1972, which Decree is attached hereto as Appendix

D and hereby made a part hereof for all purposes, and subject to the foregoing paragraphs of this Order, T.I.M.E. will proceed to fill vacancies in the following sequence:

16. T.I.M.E. will first offer to those individuals in column 1 of Appendix A hereto vacancies in the jobs set forth in column 3, on the basis of the seniority relief therein ordered, at the terminal listed in column 2.

17. T.I.M.E. will next offer to those individuals in column 1 of Appendix B hereto vacancies in the jobs set forth in column 3, on the basis of the seniority relief therein ordered, at the terminal listed in column 2.

18. T.I.M.E. will next offer to those individuals in column 1 of Appendix C hereto vacancies in the jobs set forth in column 3, with unit seniority in such jobs as of the date they enter into employment in such jobs, at the terminal listed in column 2. Provided, however, that this preference which individuals on Appendix C enjoy over the general public is not a preference over fellow employees of T.I.M.E. Individuals on Appendix C will compete for vacancies with their fellow employees at the specified terminals on the basis of company seniority.

19. After all such individuals named in Appendices A, B and C have been given a full and fair opportunity to fill such vacancies in accordance with this Order, then paragraph 13(a) of the Decree in Partial Resolution of Suit will be deemed to have been complied with and the provisions of paragraph 13(b) of said Decree will then become operative.

20. The Court is informed by defendant T.I.M.E. that T.I.M.E. has already offered those individuals in Appendix C employed at its Memphis, Tennessee terminal an opportunity to transfer to a vacancy in a line driver job, if qualified, with unit seniority in that job as of the date they entered into employment in such job and retention of any earlier seniority date

they had for company-wide fringe benefits, pursuant to a transfer policy which T.I.M.E. began at Memphis in 1969. Therefore, the provisions of this Order with respect to those individuals in Appendix C employed at T.I.M.E.'s Memphis terminal will be deemed to have already been complied with.

21. T.I.M.E. will immediately take reasonable steps to effectuate the relief to be given Otis A. Zeno and Arthur L. Thornton, as ordered in Appendix A hereto, upon receiving their written acceptance of such relief.

22. T.I.M.E. will also immediately effectuate the training to be given Lee Francis Jones, Thomas Richard Johnson, Henry L. Davis, Raymond L. Rucker, Levi Gant and James A. Keeling, as ordered in Appendix A hereto, to qualify them for the jobs of dockman, partsman or mechanic, as they choose, upon receiving their written acceptance of such relief.

C. **The Defendant Unions**

23. The defendant Unions, their officers, agents, employees, successors and all persons in active concert or participation with them or with any of them will not interfere with the relief herein ordered, nor with the relief ordered by the Decree in Partial Resolution of Suit, entered by the Court on May 12, 1972 and attached hereto as Appendix D.

D. **Reporting**

24. Within six months after entry of this Order and every six months thereafter, the defendant T.I.M.E. will furnish reports to this Court and to the United States Attorney General showing compliance and reporting and other pertinent statistical information with respect to the individuals affected by this Order. Such reports shall include the names and status of all individuals who express an interest in transferring to other jobs under this Order. These reporting requirements will terminate three (3) years subsequent to the entry of this Order; provided, however, that such time may be extended upon good cause shown.

E. **Costs**

25. T.I.M.E. D.C. shall pay plaintiff's costs of the depositions taken by plaintiff in these actions prior to the date of the Consent Decree, upon presentation of official receipts for these costs to T.I.M.E. D.C. by plaintiff, up to a maximum of five thousand dollars ($5,000). Other than the above costs, each party shall bear its own costs.

Done and Entered this 2nd day of March, 1973.

/s/ HALBERT O. WOODWARD
United States District Judge

APPENDIX A

The following individuals presented the most convincing evidence of discrimination and harm resulting therefrom. The chart below shows each individual's name and terminal as well as the job he may move to and his unit seniority in that job for such purposes as bidding and protection against layoff. Individuals in Appendix A, if found qualified, shall be given an opportunity to move to vacancies in the jobs listed in order of their awarded seniority and ahead of individuals listed in Appendices B and C. For full details about the order in which vacancies will be filled, see paragraphs 8-13 and 16-22 in this Final Order.

Name	Terminal	Job	Seniority
Richard Stinson	Hayward, California	Line Driver	July 1, 1969
Veris Sims	Denver, Colorado	Line Driver	July 2, 1965
Filberto Trujillo	Denver, Colorado	Line Driver	July 15, 1965
Edgar Cornelius Rudison	Vernon, California	Line Driver	July 2, 1965
Roy F. Patton	Vernon, California	Line Driver	July 2, 1965
James A. Floyd	Vernon, California	Line Driver	July 2, 1965
Thomas W. White	Vernon, California	Line Driver	July 2, 1965
Marvin R. Vestal	Vernon, California	Line Driver	July 2, 1965
Iris G. Darden Hicks	Vernon, California	Billing Clerk	August 1, 1966
David E. O'Neal	Vernon, California	Salesman (with normal training and probationary period)	January 1, 1966
Jose de Ramirez Almarez	Montebello, Calif.	Line Driver	July 2, 1965
John Passi	Montebello, Calif.	Line Driver	Sept. 23, 1965
Virgil A. Hardin	Montebello, Calif.	Line Driver	Oct. 28, 1965
Joe Amos	Atlanta, Georgia	Line Driver	July 2, 1965
Grady Amos	Atlanta, Georgia	Line Driver	July 2, 1965
Theodus Perry	Atlanta, Georgia	Line Driver	July 1, 1966
John J. Calhoun	Atlanta, Georgia	Line Driver	July 1, 1966
Roger McCrimmon	Irving, Texas (Dallas)	Line Driver	July 1, 1970
James H. Walker	Memphis, Tenn.	Line Driver	July 2, 1965
J. L. McNeal	Memphis, Tenn.	Line Driver	July 2, 1965
Clayborn Moman	Memphis, Tenn.	Line Driver	Jan. 1, 1966
Robert T. Jones	Memphis, Tenn.	Line Driver	Aug. 1, 1970

The following individuals shall receive immediate relief as set forth below:

Arthur L. Thornton of *Memphis, Tennessee* will be permitted to use July 2, 1965 as his unit seniority date in the job of line driver.

Otis A. Zeno of *Hayward, California* will be assigned a truck-tractor by defendant T.I.M.E. of a condition equivalent to those assigned to other city drivers who have assigned routes.

Lee Francis Jones, Thomas Richard Johnson, Henry L. Davis, Raymond L. Rucker, Levi Gant, and *James A. Keeling* of *Nashville, Tennessee* will be provided reasonable training by defendant T.I.M.E. to qualify to work as a dockman, partsman or mechanic. They will then be allowed to move to a vacancy in such job, if qualified, on the same basis as those individuals listed from 1 through 22 in Appendix A above, with a unit seniority date in the new job of July 2, 1965.

APPENDIX B

The evidence in respect to the following individuals is not sufficient to show clear and convincing specific instances of discrimination or harm resulting therefrom. The evidence does show, however, that these individuals were very possibly the objects of discrimination and that they were likely harmed by such discrimination. Because there is no specific evidence, this Court, having broad equitable power with which to fashion a remedy, holds that these individuals are entitled to openings in the jobs listed below with a unit seniority date in that job for such purposes as bidding and protection against layoff as of the date this suit was filed—January 14, 1971. Individuals in Appendix B, if found qualified, shall be given an opportunity to move to vacancies in the jobs listed with a unit seniority date of January 14, 1971 after those in Appendix A, but before those in Appendix C. For full details about the order in which vacancies will be filled, see paragraphs 8-13 and 16-22 in this Final Order.

Name	Terminal	Job
Carlton King	Hayward, Calif.	Line Driver
George W. Sullivan	Hayward, Calif.	Line Driver
Ophers Barber	Irving, Texas (Dallas)	Line Driver
Foster Barnes	San Antonio, Texas	City Driver

APPENDIX C

As to the following individuals, either there was no evidence presented of discrimination against themselves and resulting harm, or they are no longer employed by T.I.M.E. All are members of a class of discriminatees; however, this Court has no evidence to show that these individuals were either harmed or not harmed individually by the discrimination to the class as a whole. It would be unjust to deny completely any relief to these individuals; however, it would also be unjust to grant relief to all when the Court has no evidence of harm individually. In balancing the equities, this Court orders that these individuals be entitled to fill vacancies before the general public, but after those individuals listed in Appendices A and B. Individuals in Appendix C, if found qualified, shall be given an opportunity to move to vacancies in the jobs listed, with unit seniority for such purposes as bidding and protection against layoff from the time they enter into employment in that job. For full details about the order in which vacancies will be filled, see paragraphs 8-13 and 16-22 in this Final Order.

Name	Terminal	Job
J. F. Johnson	Hayward, Calif.	Line Driver
G. F. Navarro	Hayward, Calif.	Line Driver
C. Cordova	Hayward, Calif.	Line Driver
J. R. Madrid	Hayward, Calif.	Line Driver
C. Rodriguez	Hayward, Calif.	Line Driver
L. D. Torres	Hayward, Calif.	Line Driver
J. B. Trujillo	Hayward, Calif.	Line Driver
A. Aguilar	Hayward, Calif.	Line Driver
H. M. Davis, Jr.	Hayward, Calif.	Line Driver
J. C. Keith	Hayward, Calif.	Line Driver
J. H. Munoz	Hayward, Calif.	Line Driver
J. Plasencia	Hayward, Calif.	Line Driver
T. B. Posada	Hayward, Calif.	Line Driver
P. C. Rivers	Hayward, Calif.	Line Driver
R. P. Santos	Hayward, Calif.	Line Driver
E. Tomlinson	Hayward, Calif.	Line Driver
Bennie Whitfield	Hayward, Calif.	Line-Driver or City Driver

Name	Terminal	Job
E. Barr	Denver, Colorado	Line Driver
J. A. Brame	Denver, Colorado	Line Driver
C. Cato	Denver, Colorado	Line Driver
B. T. Chism	Denver, Colorado	Line Driver
M. Craft	Denver, Colorado	Line Driver
R. A. Fisher	Denver, Colorado	Line Driver
R. Franklin	Denver, Colorado	Line Driver
D. W. Gadison	Denver, Colorado	Line Driver
E. E. Guerra	Denver, Colorado	Line Driver
W. Henderson	Denver, Colorado	Line Driver
H. H. Jefferson	Denver, Colorado	Line Driver
E. Knight	Denver, Colorado	Line Driver
F. Mallard	Denver, Colorado	Line Driver
S. Moore	Denver, Colorado	Line Driver
L. D. Parker	Denver, Colorado	Line Driver
D. L. Patterson	Denver, Colorado	Line Driver
G. L. Santifer	Denver, Colorado	Line Driver
T. S. Stephens	Denver, Colorado	Line Driver
C. Thorpe	Denver, Colorado	Line Driver
M. Montoya	Denver, Colorado	Line Driver
F. L. Parker	Denver, Colorado	Line Driver
C. Threats	Denver, Colorado	Line Driver
Harold Anderson*	Denver, Colorado	Line Driver
Willie Rogers*	Denver, Colorado	Line Driver
Willie Hearne*	Denver, Colorado	Line Driver
Elias Gallegos*	Denver, Colorado	Line Driver
Larce Frazier*	Denver, Colorado	Line Driver
B. Brito	Denver, Colorado	Line Driver
R. Costillo	Denver, Colorado	Line Driver
H. Estrada	Denver, Colorado	Line Driver
D. L. Henton	Denver, Colorado	Line Driver
F. Hernandez	Denver, Colorado	Line Driver
R. D. Robles	Denver, Colorado	Line Driver
D. M. Simon	Denver, Colorado	Line Driver
W. Taylor	Denver, Colorado	Line Driver
G. E. Vigil	Denver, Colorado	Line Driver
P. J. Vigil	Denver, Colorado	Line Driver
F. H. Anderson	Denver, Colorado	Line Driver
P. J. Crespin	Denver, Colorado	Line Driver
H. Leslie	Denver, Colorado	Line Driver
J. O. Ortega	Denver, Colorado	Line Driver

* Black or Spanish surnamed American hired in serviceman classification at Denver terminal, inadvertently omitted by plaintiff from its June 19, 1972 list of "Individuals for Whom Plaintiff Seeks Relief."

Name	Terminal	Job
J. N. Pina	Denver, Colorado	Line Driver
J. L. Quintana	Denver, Colorado	Line Driver
J. Sammon	Denver, Colorado	Line Driver
M. Trujillo	Denver, Colorado	Line Driver
W. Vaughn	Denver, Colorado	Line Driver
C. L. Veals	Denver, Colorado	Line Driver
G. Williams	Denver, Colorado	Line Driver
P. P. Hernandez	Denver, Colorado	Line Driver
F. C. Ortega	Denver, Colorado	Line Driver
Lenard Harrison	Denver, Colorado	Line Driver
Earmitt C. Jones	Denver, Colorado	Line Driver
Jerome Pastwick	Denver, Colorado	Dockman
R. Bracamontes	Vernon, Calif.	Line Driver
J. H. Collins	Vernon, Calif.	Line Driver
W. Collins	Vernon, Calif.	Line Driver
M. Ezell, Jr.	Vernon, Calif.	Line Driver
J. H. Gambrell	Vernon, Calif.	Line Driver
T. Guidry	Vernon, Calif.	Line Driver
J. Kelley	Vernon, Calif.	Line Driver
E. E. Linarez	Vernon, Calif.	Line Driver
E. McGee	Vernon, Calif.	Line Driver
T. D. Purvis	Vernon, Calif.	Line Driver
C. Ramah	Vernon, Calif.	Line Driver
H. Rey	Vernon, Calif.	Line Driver
F. E. Robinson	Vernon, Calif.	Line Driver
C. B. Telles	Vernon, Calif.	Line Driver
K. L. Williams	Vernon, Calif.	Line Driver
W. Atkins	Vernon, Calif.	Line Driver
M. O. Carrillo	Vernon, Calif.	Line Driver
C. Collins	Vernon, Calif.	Line Driver
M. T. Espinosa	Vernon, Calif.	Line Driver
G. E. Freeny	Vernon, Calif.	Line Driver
A. A. Garcia	Vernon, Calif.	Line Driver
R. H. Harris	Vernon, Calif.	Line Driver
L. D. Hughey	Vernon, Calif.	Line Driver
H. R. Jimenez	Vernon, Calif.	Line Driver
F. T. Lara	Vernon, Calif.	Line Driver
E. E. Marquez	Vernon, Calif.	Line Driver
J. I. McIver	Vernon, Calif.	Line Driver
F. Mendivil	Vernon, Calif.	Line Driver
A. M. Moniz	Vernon, Calif.	Line Driver
W. Richards	Vernon, Calif.	Line Driver
M. Serna, Jr.	Vernon, Calif.	Line Driver
D. J. Torres	Vernon, Calif.	Line Driver

Name	Terminal	Job
D. J. Valenzuela	Vernon, Calif.	Line Driver
W. E. Agee	Vernon, Calif.	Line Driver
W. Battle	Vernon, Calif.	Line Driver
G. Escajeda, Jr.	Vernon, Calif.	Line Driver
T. Espinosa	Vernon, Calif.	Line Driver
G. F. Haynes	Vernon, Calif.	Line Driver
A. Hernandez	Vernon, Calif.	Line Driver
J. High	Vernon, Calif.	Line Driver
W. G. Jenkins	Vernon, Calif.	Line Driver
J. V. Lopez	Vernon, Calif.	Line Driver
A. Martinez	Vernon, Calif.	Line Driver
M. D. Melenez	Vernon, Calif.	Line Driver
G. M. Miranda	Vernon, Calif.	Line Driver
J. R. Rivers	Vernon, Calif.	Line Driver
A. M. Rodriguez	Vernon, Calif.	Line Driver
F. G. Salinas	Vernon, Calif.	Line Driver
E. Zamarripa	Vernon, Calif.	Line Driver
J. Solis	Vernon, Calif.	Line Driver
J. E. Aurelio	Vernon, Calif.	Line Driver
H. Bausley	Vernon, Calif.	Line Driver
J. L. Bosques	Vernon, Calif.	Line Driver
S. Burton	Vernon, Calif.	Line Driver
L. A. Byers	Vernon, Calif.	Line Driver
R. G. Compos	Vernon, Calif.	Line Driver
A. Carlos	Vernon, Calif.	Line Driver
E. S. Castro	Vernon, Calif.	Line Driver
F. Cazares	Vernon, Calif.	Line Driver
J. Corley	Vernon, Calif.	Line Driver
M. B. Corona	Vernon, Calif.	Line Driver
L. E. Daniels	Vernon, Calif.	Line Driver
S. M. Davis	Vernon, Calif.	Line Driver
M. E. Dean	Vernon, Calif.	Line Driver
D. L. De Leon	Vernon, Calif.	Line Driver
J. S. Delgado	Vernon, Calif.	Line Driver
C. Edwards	Vernon, Calif.	Line Driver
J. A. Garcia	Vernon, Calif.	Line Driver
R. Garcia	Vernon, Calif.	Line Driver
R. E. Glenn, Jr.	Vernon, Calif.	Line Driver
S. A. Golden	Vernon, Calif.	Line Driver
R. L. Height	Vernon, Calif.	Line Driver
H. Herrera	Vernon, Calif.	Line Driver
J. Jefferson, Jr.	Vernon, Calif.	Line Driver
T. Jenigan	Vernon, Calif.	Line Driver
D. Johnson	Vernon, Calif.	Line Driver

Name	Terminal	Job
G. E. Johnson	Vernon, Calif.	Line Driver
E. Jones	Vernon, Calif.	Line Driver
L. D. Jones	Vernon, Calif.	Line Driver
W. T. Jones, III	Vernon, Calif.	Line Driver
F. X. Martinez	Vernon, Calif.	Line Driver
J. L. Melero	Vernon, Calif.	Line Driver
E. D. Molina	Vernon, Calif.	Line Driver
A. Montijo	Vernon, Calif.	Line Driver
H. F. Navarro	Vernon, Calif.	Line Driver
H. B. Nettles	Vernon, Calif.	Line Driver
L. A. Palacio	Vernon, Calif.	Line Driver
J. F. Pandolf	Vernon, Calif.	Line Driver
O. Pantoja, Jr.	Vernon, Calif.	Line Driver
B. Ponce, Jr.	Vernon, Calif.	Line Driver
A. C. Porter	Vernon, Calif.	Line Driver
R. J. Quevedo	Vernon, Calif.	Line Driver
M. Ramirez	Vernon, Calif.	Line Driver
J. Ramos	Vernon, Calif.	Line Driver
H. L. Reed	Vernon, Calif.	Line Driver
W. J. Roddie	Vernon, Calif.	Line Driver
R. H. Rodriguez	Vernon, Calif.	Line Driver
J. L. Smith	Vernon, Calif.	Line Driver
J. Talamantes	Vernon, Calif.	Line Driver
J. Taylor	Vernon, Calif.	Line Driver
R. Tellez	Vernon, Calif.	Line Driver
F. Thompson	Vernon, Calif.	Line Driver
J. Thompson	Vernon, Calif.	Line Driver
G. L. Torres	Vernon, Calif.	Line Driver
J. F. Torres	Vernon, Calif.	Line Driver
S. Tussey	Vernon, Calif.	Line Driver
J. L. Walters	Vernon, Calif.	Line Driver
R. E. Washington	Vernon, Calif.	Line Driver
R. A. Wesley	Vernon, Calif.	Line Driver
A. L. Williams (1951)	Vernon, Calif.	Line Driver
H. Woodson	Vernon, Calif.	Line Driver
F. Wright, Jr.	Vernon, Calif.	Line Driver
A. L. Williams (1956)	Vernon, Calif.	Line Driver
F. Atkins*	Vernon, Calif.	Line Driver
W. Horace*	Vernon, Calif.	Line Driver
W. Davis	Vernon, Calif.	Line Driver

* Black hired in dockman classification at Vernon terminal, inadvertently omitted by plaintiff from its June 19, 1972 list of "Individuals for Whom Plaintiff Seeks Relief."

Name	Terminal	Job
H. Freeny	Vernon, Calif.	Line Driver
L. Henderson	Vernon, Calif.	Line Driver
C. Merrill	Vernon, Calif.	Line Driver
James E. Neely	Vernon, Calif.	Line Driver
William T. Simpson, Jr.	Vernon, Calif.	Line Driver
George Taylor	Vernon, Calif.	Line Driver
T. P. Escalera	Montebello, Calif.	Line Driver
T. O. Gastelo	Montebello, Calif.	Line Driver
F. S. Herrera	Montebello, Calif.	Line Driver
I. V. Vasquez	Montebello, Calif.	Line Driver
J. Vasquez	Montebello, Calif.	Line Driver
E. L. Banuelos	Montebello, Calif.	Line Driver
R. T. Nebo	Montebello, Calif.	Line Driver
R. J. Phillips	Montebello, Calif.	Line Driver
J. Plant, Jr.	Montebello, Calif.	Line Driver
A. B. Soleto	Montebello, Calif.	Line Driver
J. B. Soleto	Montebello, Calif.	Line Driver
W. B. Turner	Montebello, Calif.	Line Driver
J. R. Castanon	Montebello, Calif.	Line Driver
G. Cooper	Montebello, Calif.	Line Driver
A. Dominguez	Montebello, Calif.	Line Driver
A. Gomez	Montebello, Calif.	Line Driver
A. R. Gomez	Montebello, Calif.	Line Driver
R. Parral	Montebello, Calif.	Line Driver
M. S. Portugal	Montebello, Calif.	Line Driver
A. H. Solorzano	Montebello, Calif.	Line Driver
L. E. Villa	Montebello, Calif.	Line Driver
C. E. Walter	Montebello, Calif.	Line Driver
G. G. Welsh	Montebello, Calif.	Line Driver
F. D. Blanco	Montebello, Calif.	Line Driver
N. Cantu	Montebello, Calif.	Line Driver
J. S. Cuevas	Montebello, Calif.	Line Driver
R. Flores	Montebello, Calif.	Line Driver
W. J. Gonsalves	Montebello, Calif.	Line Driver
F. Hasson, Jr.	Montebello, Calif.	Line Driver
D. A. Hernandez	Montebello, Calif.	Line Driver
T. A. Madrid	Montebello, Calif.	Line Driver
E. Martinez	Montebello, Calif.	Line Driver
A. Newsom	Montebello, Calif.	Line Driver
A. B. Rodriguez	Montebello, Calif.	Line Driver
E. W. Turner	Montebello, Calif.	Line Driver
R. R. Williams	Montebello, Calif.	Line Driver
W. M. Williams	Montebello, Calif.	Line Driver
R. Montelongo	Montebello, Calif.	Line Driver

Name	Terminal	Job
I. M. Villarruel	Montebello, Calif.	Line Driver
A. M. Bender	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
J. Bradley	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
J. E. Buchanan	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
S. Burks	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
C. Collier	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
S. W. Gordon	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
A. Smith	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
M. Washington, Jr.	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
J. E. Winfrey	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
R. L. Williams	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
William E. Dobbin	Nashville, Tenn.	Dockman
James Wallace, Jr.	Nashville, Tenn.	Dockman
C. F. Bankston	Atlanta, Georgia	Line Driver
W. Laney	Atlanta, Georgia	Line Driver
R. Parks	Atlanta, Georgia	Line Driver
R. R. Tucker	Atlanta, Georgia	Line Driver
E. Franklin	Atlanta, Georgia	Line Driver
W. Minniefield	Atlanta, Georgia	Line Driver
P. Rucker (1948)	Atlanta, Georgia	Line Driver
P. Rucker (1951)	Atlanta, Georgia	Line Driver
B. F. Lee	Atlanta, Georgia	Line Driver
J. Batchelor	Atlanta, Georgia	Line Driver
W. Heath	Atlanta, Georgia	Line Driver
T. E. Perry	Atlanta, Georgia	Line Driver
J. Banks	Atlanta, Georgia	Line Driver
J. Anderson	Chicago, Illinois	City Driver or Line Driver
H. Christmas	Chicago, Illinois	City Driver or Line Driver
F. E. Alfaro	Chicago, Illinois	City Driver or Line Driver
J. Cerda	Chicago, Illinois	City Driver or Line Driver
H. G. Cuevas	Chicago, Illinois	City Driver or Line Driver
M. Gomez	Chicago, Illinois	City Driver or Line Driver

Name	Terminal	Job
M. Guerrero	Chicago, Illinois	City Driver or Line Driver
O. R. Mendoza	Chicago, Illinois	City Driver or Line Driver
F. Rangel, Jr.	Chicago, Illinois	City Driver or Line Driver
D. Conner	Chicago, Illinois	City Driver or Line Driver
H. Guyse	Chicago, Illinois	City Driver or Line Driver
C. McDalton	Chicago, Illinois	City Driver or Line Driver
A. Austin	Chicago, Illinois	Line Driver
L. Ware	Chicago, Illinois	Line Driver
D. M. Blanton	Oklahoma City, Okl.	Line Driver
A. M. Castillo	Oklahoma City, Okl.	Line Driver
T. Jordan, Jr.	Oklahoma City, Okl.	Line Driver
J. S. Mojica	Oklahoma City, Okl.	Line Driver
D. Smith	Oklahoma City, Okl.	Line Driver
J. W. Walter	Oklahoma City, Okl.	Line Driver
H. L. Brown	Irving, Texas	Line Driver
R. L. Green	Irving, Texas	Line Driver
C. E. Lewis	Irving, Texas	Line Driver
A. L. McKnight	Irving, Texas	Line Driver
D. Parson	Irving, Texas	Line Driver
G. L. Simmons	Irving, Texas	Line Driver
W. Z. Flemming	Irving, Texas	Line Driver
F. Graves, Jr.	Irving, Texas	Line Driver
B. C. Johnson	Irving, Texas	Line Driver
L. E. Reid, Jr.	Irving, Texas	Line Driver
G. H. Sanders	Irving, Texas	Line Driver
C. V. Stephenson	Irving, Texas	Line Driver
P. L. Walton, Jr.	Irving, Texas	Line Driver
Harrell Holly	Irving, Texas	Line Driver
Walter J. Price	Irving, Texas	City Driver or Dockman
Michael Arriaga	Irving, Texas	City Driver or Dockman
Tereso J. Gonzales	Irving, Texas	City Driver or Dockman
*G. W. Fisher	Memphis, Tenn.	Line Driver
A. Henderson	Memphis, Tenn.	Line Driver
L. Jones	Memphis, Tenn.	Line Driver

* The relief specified in Appendix C for all of the following incumbent employees at the Memphis, Tennessee terminal will be deemed to have already been complied with—see paragraph 20 of this Final Order.

Name	Terminal	Job
R. D. Parker	Memphis, Tenn.	Line Driver
D. C. Robinson	Memphis, Tenn.	Line Driver
R. Sanders	Memphis, Tenn.	Line Driver
L. R. Taylor	Memphis, Tenn.	Line Driver
F. Wighley	Memphis, Tenn.	Line Driver
J. Wiley	Memphis, Tenn.	Line Driver
E. E. Ballard	Memphis, Tenn.	Line Driver
J. Glasper	Memphis, Tenn.	Line Driver
W. H. Harrison	Memphis, Tenn.	Line Driver
M. Smith	Memphis, Tenn.	Line Driver
S. Wilburn	Memphis, Tenn.	Line Driver
C. Woods	Memphis, Tenn.	Line Driver
J. R. Woods	Memphis, Tenn.	Line Driver
S. Murry	Memphis, Tenn.	Line Driver
R. D. Campbell	Memphis, Tenn.	Line Driver
W. G. Gately	Memphis, Tenn.	Line Driver
B. B. Hodges	Memphis, Tenn.	Line Driver
O. Holcomb	Memphis, Tenn.	Line Driver
A. C. Taylor	Memphis, Tenn.	Line Driver
J. L. Benefield	Memphis, Tenn.	Line Driver
J. L. Boudreaux	Memphis, Tenn.	Line Driver
W. G. Bryan	Memphis, Tenn.	Line Driver
H. S. Holliday	Memphis, Tenn.	Line Driver
T. Luttrell	Memphis, Tenn.	Line Driver
O. McElroy	Memphis, Tenn.	Line Driver
L. E. Nichols	Memphis, Tenn.	Line Driver
J. W. O'Neill	Memphis, Tenn.	Line Driver
O. L. Shaw	Memphis, Tenn.	Line Driver
P. C. Thomas	Memphis, Tenn.	Line Driver
J. Williamson	Memphis, Tenn.	Line Driver
Charles E. Taylor	Memphis, Tenn.	Line Driver
Charles D. Glover	Memphis, Tenn.	Line Driver
B. Wilbanks	Memphis, Tenn.	Line Driver
F. Yount	Memphis, Tenn.	Line Driver
H. Kelley	Memphis, Tenn.	Line Driver
G. Jacques	Memphis, Tenn.	Line Driver
Fred Williams, Jr.	Memphis, Tenn.	Line Driver
W. E. Conner	Phoenix, Arizona	Line Driver
G. Amaya	Phoenix, Arizona	Line Driver
P. Estrada	Phoenix, Arizona	Line Driver
A. M. Villarreal	Phoenix, Arizona	Line Driver
M. L. Cobb	Phoenix, Arizona	Line Driver
D. E. Lechuga	Phoenix, Arizona	Line Driver
I. W. Jackson	Phoenix, Arizona	Line Driver

Name	Terminal	Job
J. E. Young	Phoenix, Arizona	Line Driver
H. De La Rosa	Lubbock, Texas	Line Driver
A. Larkin	Lubbock, Texas	Line Driver
T. Lewis	Lubbock, Texas	Line Driver
C. E. Jenkins	Chattanooga, Tenn.	Line Driver
J. Gates	Chattanooga, Tenn.	Line Driver
J. C. Grayson	Chattanooga, Tenn.	Line Driver
R. J. Moorer	Chattanooga, Tenn.	Line Driver
J. Littleton, Jr.	Paris, Tennessee	Line Driver
E. Howard	Cincinnati, Ohio	Line Driver
I. Jackson	Kansas City, Mo.	Line Driver
N. O. Pinon	Kansas City, Mo.	Line Driver
L. R. Chandler	Knoxville, Tenn.	Line Driver
F. R. Davis	Knoxville, Tenn.	Line Driver
C. Wadley	Knoxville, Tenn.	Line Driver
C. G. Dorsey	Portland, Oregon	Line Driver
W. L. Moore	Portland, Oregon	Line Driver
A. R. Coca	Portland, Oregon	Line Driver
G. Brock	St. Louis, Missouri	Line Driver
H. L. Thorpe, Jr.	St. Louis, Missouri	Line Driver
G. W. Hendricks	Seattle, Washington	Line Driver
D. Hernandez	Seattle, Washington	Line Driver
O. I. Braswell	Seattle, Washington	Line Driver
C. R. Timmons	Seattle, Washington	Line Driver

ORDER
Amending Final Order by District Court for the Northern District of Texas, March 19, 1973, Unreported

In the United States District Court for the Northern District of Texas, Lubbock Division

United States of America,
Plaintiff,
v.
T.I.M.E. D.C., Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO,
Defendants.
Civil Action No. 5-868

United States of America,
Plaintiff,
v.
T.I.M.E. Freight, Inc. (now known as T.I.M.E. D.C., Inc.), and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,
Defendants.
Civil Action No. 5-897

Order

Subsequent to the entry of the Court's Order in the above entitled and numbered causes of action on March 2, 1973 motions were duly and timely made for amendment of paragraph

18 of said Order. Upon reexamination of the Order, the previous Opinions of this Court, and after having received written communication from all parties to this case, both those in favor of and those opposed to the amendment of paragraph 18, the Court is of the opinion that paragraph 18 should be amended as hereinafter set forth. It appears that if paragraph 18 is not amended that the process of removing any discriminatory practices will be delayed and inequities might possibly result.

It is therefore Ordered and Adjudged that the Final Order of this Court dated March 2, 1973 shall be amended so that paragraph 18 thereof shall hereafter read as follows:

"18. T.I.M.E. will next offer to those individuals in column 1 of Appendix C hereto vacancies in the jobs set forth in column 3, with unit seniority in such jobs as of the date they enter into employment in such jobs, at the terminal listed in column 2."

Other than specifically set forth above the Order of this Court dated March 2, 1973 shall remain unchanged.

The Clerk will furnish a copy hereof to each attorney.

Entered this 19th day of March, 1973.

/s/ HALBERT O. WOODWARD
United States District Judge

THE CIVIL RIGHTS ACT OF 1964,
As Amended—Title VII, Section 703(a) Through (j), 42 USC Section 2000(e)-2(a) Through (j)

§ 2000e-2. Unlawful Employment Practices—Employer Practices

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely, affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

* * * * * * *

Labor organization practices

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which

would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

* * * * * * *

Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29.

* * * * * * *

Preferential treatment not to be granted on account of existing number or percentage imbalance

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area. Pub.L. 88-352, Title VII, § 703, July 2, 1964, 78 Stat. 255; Pub.L. 92-261, § 8(a),(b), Mar. 24, 1972, 86 Stat. 109.

THE CIVIL RIGHTS ACT OF 1964, As Amended—Title VII, Sections 707(a) Through (e); 42 U.S.C. Sections 2000(e) 6(a) Through (e)

§ 2000e-6. Civil actions by the Attorney General—Complaint

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

Jurisdiction; three-judge district court for cases of general public importance; hearing, determination, expedition of action, review by Supreme Court; single-judge district court; hearing, determination, expedition of action

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk c such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief

judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

(c) Effective two years after March 24, 1972, the function of the Attorney General under this section shall be transferred to

the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

(e) Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title.